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LES REPORTS DES CASES & MATTERS EN LEY,

Reſolves & Adjudges en les Courts del Roy EN

IRELAND:

Collect & digeſt per

Sir *JOHN DAVIS* Chivaler,

Atturney Generall del Roy en ceſt Realm.

Liber librum aperit.

LONDON,

Printed by E. Flesher, J. Streater, and H. Twyford, Aſſigns of Richard Atkyns and Edward Atkyns, Eſquires. 1674.

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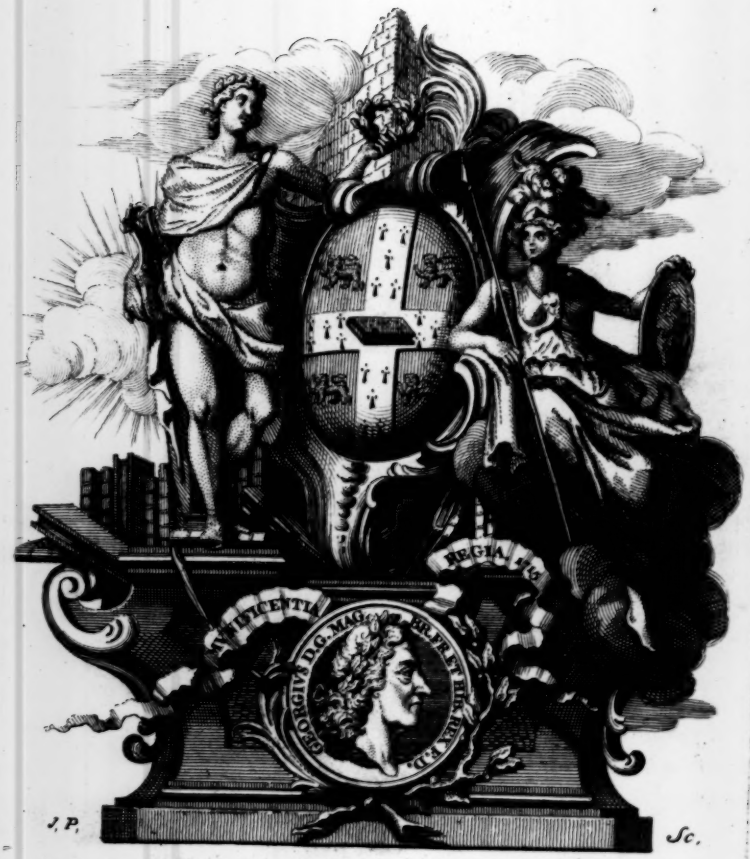
Cum Gratia & Privilegio Regiæ Majeſtatis.



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To the Right Honourable my ſingular good Lord,

THOMAS Lord ELLESMERE,

Lord Chancellour of ENGLAND.

KING *Henry* the Second (my moſt honourable good Lord) was the firſt King of *England* after the *Norman Conqueſt* that was ſtyled *Lord of Ireland*. Yet are there no Records of that King's time remaining, whereby it may appear that he eſtabliſhed any form of civil Government in this Land. But it is manifeſt by many Records and ſtories, that his Son King *John* made the firſt diviſion of Counties in *Ireland*, publiſhed the Laws of *England*, and commanded the due execution thereof in all thoſe Counties which he had made, erected the Courts of Juſtice, and made the Standard of Iriſh Moneys equal with the Engliſh: Briefly, he did order and ſettle the Government here in all points according to the Modell of the Commonwealth of *England*. And to that end, when himſelf in perſon came over into *Ireland* the ſecond time, (which was in the twelfth year of his Reign) he brought with him many learned perſons in the Law, and other Officers and Miniſters of all ſorts, to put the Engliſh

Laws in execution: whereof there is a notable Record in the Tower of *London*, 11 *Henr.* 3. *Patent. Membr.* 3. agreeing with that which is related by *Matth. Paris Hiſt. magn. fol.* 220. *b.*

After which time the Records of all legall Acts and proceedings, namely the *Pipe-rolls*, containing the charge of the *Revenue* both certain and caſuall, the *Plea-rolls*, containing as well *Common Pleas* as *Pleas of the Crown*, *Parliament-Rolls*, *Charters*, *Patents*, *Commiſſions*, and *Inquiſitions*, were made up in good form in everie King's time, the latter end of the Reign of King *Henry* the Sixth, when, by reaſon of the diſſenſion of the two Royall Houſes, the State of *England* neglecting the government of this Realm, the Clarks and Officers grew alſo negligent in the execution of their ſeverall places. And though many of thoſe ancient Records have been embezeled, and many have periſhed by careleſſe keeping, yet divers of all ſorts do yet remain, as fair and authentick as any I have ſeen in *England*. Howbeit during all the time that the Laws of *England* have had their courſe in *Ireland*, which is now full four hundred years, there hath not been any Report made and publiſhed of any Caſe in Law argued or adjudged in this Kingdome; but all the arguments and reaſons of the Judgements and Reſolutions given in the Courts of *Ireland* have hitherto been utterly loſt, and buried in oblivion.

Which ſeemeth to me the more ſtrange, becauſe there have been within this Realm, in every Age ſince the reign of King *John*, men ſufficiently learned in the Laws, who have derived their learning out of the fountains of Law in *England*, (the *Innes of Court* there being the moſt flouriſhing and honourable Academy of Gentlemen that ever was eſtabliſhed in any nation, for the ſtudy and learning of the Municipall Laws thereof.) And therefore they might have been induced to imitate the learned men of *England*, who from the *Norman Conqueſt* downwards did continually preſerve the memory of ſuch notable Caſes as did from time to time ariſe, and were argued and ruled in the Courts of Juſtice in *England*, by reducing the ſame into Books of *Reports*, which may be called, and not improperly, the *Annals of the Law*.

For

A Preface Dedicatory.

For albeit our *Reports* at large which are publiſhed in print do begin with the reign of King *Edw.* 3. and the broken Caſes of elder times, which are ſcattered in the *Abridgements*, are not found higher then the time of King *Hen.* 3. yet aſſuredly there were other *Reports*, digeſted in *Tears* and *Terms*, as ancient as the time of King *William* the *Conquerour:* as appeareth by that which *Chaucer* writeth of the *Serjeant at Law*,

In terms had he Caſes and Dooms all,
That fro that time of King William *were fall.*

Neither doth *Glanvil* or *Bracton* diſaffirm this antiquity of the *Reports* of the Law, in that they affirm that the Law of *England* was *Jus non ſcriptum* in their times, as your Lordſhip hath noted in that moſt learned, grave and prudent ſpeech of yours, touching the *Poſtnati* of *Scotland.* For indeed thoſe *Reports* are but Comments or Interpretations upon the Text of the *Common Law:* which Text was never originally written, but hath ever been preſerved in the memory of men, though no man's memory can reach to the originall thereof.

For the *Common Law* of *England* is nothing elſe but the *Common Cuſtome* of the Realm: and a *Cuſtome* which hath obtained the force of a Law is always ſaid to be *Jus non ſcriptum:* for it cannot be made or created either by Charter, or by Parliament, which are Acts reduced to writing, and are alwaies matter of Record; but being onely matter of fact, and conſiſting in uſe and practice, it can be recorded and regiſtred no-where but in the memory of the people.

For a *Cuſtome* taketh beginning and groweth to perfection in this manner: When a reaſonable act once done is found to be good and beneficiall to the people, and agreeable to their nature and diſpoſition, then do they uſe it and practiſe it again and again, and ſo by often iteration and multiplication of the act it becometh a *Cuſtome*; and being continued without interruption time out of mind, it obtaineth the force of a *Law.*

And this *Cuſtomary Law* is the moſt perfect and moſt excellent, and without compariſon the beſt, to make and preſerve a Commonwealth. For the *written Laws* which are made either by the Edicts of Princes, or by Councils of Eſtate, are impoſed upon the Subject before any Triall or Probation made, whether the ſame be fit and agreeable to the nature and diſpoſition of the people, or whether they will breed any inconvenience or

no.

no. But a *Cuſtome* doth never become a Law to bind the people, untill it hath been tried and approved time out of mind, during all which time there did thereby ariſe no inconvenience: for if it had been found inconvenient at any time, it had been uſed no longer, but had been interrupted, and conſequently it had loſt the virtue and force of a Law.

Therefore as the *Law of Nature*, which the School-men call *Jus commune*, and which is alſo *Jus non ſcriptum*, being written onely in the heart of man, is better then all the written Laws in the world to make men honeſt and happy in this life, if they would obſerve the rules thereof: ſo the *Cuſtomary Law* of *England*, which we do likewiſe call *Jus commune*, as coming neareſt to the Law of *Nature*, which is the root and touchſtone of all good Laws, and which is alſo *Jus non ſcriptum*, and written onely in the memory of man, (for every *Cuſtome*, though it took beginning beyond the memory of any living man, yet it is continued and preſerved in the memory of men living) doth far excell our *written* Laws, namely our Statutes or Acts of Parliament; which is manifeſt in this, that when our Parliaments have altered or changed any fundamentall points of the Common Law, thoſe alterations have been found by experience to be ſo inconvenient for the Commonwealth, as that the Common Law hath in effect been reſtored again, in the ſame points, by other Acts of Parliament in ſucceeding Ages.

And as our *Cuſtomary unwritten* Law doth excell our Parliament Laws, which are *written*; ſo for the government of the Commonweal of *England*, (which is as well inſtituted and eſtabliſhed as any Commonweal in Chriſtendome) our native *Common Law* is far more apt and agreeable then the *Civil* or *Canon Law*, or any other written Law in the world beſides: howſoever ſome of our Countrymen, who are *Cives in aliena Republica, & hoſpites in ſua*, may perhaps affirm the contrary. But certain it is, that the great and wiſe men of *England* in the Parliament of *Merton* did not prefer a Forrein Law before their own, when motion being made by the Clergie, that Children born before Marriage might be adjudged legitimate, they all made anſwer with one voice, *Nalumus leges Angliæ mutari*. And again in 11 *R.* 2. when a new courſe of proceeding in Criminall Cauſes, according to the form

form of the *Civil* Law, was propounded in that unruly Parliament, anſwer was made by all the Eſtates, That the Realm of *England* neither had been in former times, nor hereafter ſhould be ruled and governed by the *Civil* Law. *Rot. Parliam.* 11 *R.* 2. in *Archiv. Turris.*

And here I may obſerve for the honour of our Nation, and of our Auncеſtours who have founded this Commonweal wherein we live, and enjoy ſo many felicities, that *England*, having had a good and happy *Genius* from the beginning, hath been inhabited alwaies with a vertuous and wiſe people, who ever embraced honeſt and good *Cuſtomes*, full of reaſon and conveniencie, which being confirmed by common uſe and practice, and continued time out of mind, became the *Common Law* of the Land. And though this Law be the peculiar invention of this Nation, and delivered over from age to age by Tradition; (for the Common Law of *England* is a Tradition, & learned by Tradition as well as by Books) yet may we truly ſay, that no humane Law, written or unwritten, hath more certaintie in the Rules and Maximes, more coherence in the parts thereof, or more harmonie of reaſon in it: nay, we may confidently averr, that it doth excell all other Laws in upholding a free *Monarchie*, which is the moſt excellent form of Government, exalting the Prerogative Royall, and being very tender and watchfull to preſerve it, and yet maintaining withall the ingenious Liberty of the Subject.

Briefly, it is ſo framed and fitted to the nature and diſpoſition of this people, as we may properly ſay it is connatural to the Nation, ſo as it cannot poſſibly be ruled by any other Law. This Law therefore doth demonſtrate the ſtrength of wit and reaſon and ſelf-ſufficiency which hath been always in the People of this Land, which have made their own Laws out of their wiſedome and experience, (like a Silk-worm that formeth all her web out of her ſelf onely) not begging or borrowing a form of a Commonweal, either from *Rome* or from *Greece*, as all other Nations of *Europe* have done; but having ſufficient proviſion of law & juſtice within the Land, have no need *Juſtitiam & judicium ab alienigenis emendicare*, as King *John* wrote moſt nobly to Pope *Innocent* the Third, *Matth Paris Hiſt. magn. p.* 215. *En populus ſapiens & intelligens, gens magna:* as it is ſaid of God's choſen people, 4. *Deut.* Neither could any one man ever

vaunt, that, like *Minos*, *Solon*, or *Lycurgus*, he was the first *Law-giver* to our Nation: for neither did the King make his own *Prerogative*, nor the Judges make the *Rules* or *Maximes* of the Law, nor the common ſubject preſcribe and limit the *Liberties* which he injoyeth by the Law. But, as it is ſaid of every Art or Science which is brought to perfection, *Per varios uſus Artem experientia fecit*; ſo may it properly be ſaid of our Law, *Per varios uſus Legem experientia fecit*, Long experience, and many trials of what was beſt for the common good, did make the *Common Law*.

But upon what reaſon then doth *Polydor Virgil* and other Writers affirm, that King *William* the *Conquerour* was our *Law-giver*, and cauſed all our Laws to be written in French? Aſſuredly the *Norman Conquerour* found the ancient Laws of *England* ſo honourable & profitable both for the Prince and people, as that he thought it not fit to make any alteration in the fundamental points or ſubſtance thereof; the change that was made was but *in formulis Juris*: he altered ſome legal forms of proceeding, and to honour his own language, and for a mark of Conqueſt withall, he cauſed the pleading of divers Actions to be made and entred in French, and ſet forth his publick Ordinances and Acts of Council in the ſame tongue. Which form of pleading in French continued till 36 *Ed.* 3. when (in regard that the French tongue began to grow out of uſe, which for many years after the *Norman Conqueſt* was as common as the Engliſh among the Gentry of *England*) it was ordained by Parliament, That all Pleas ſhould be pleaded, debated and judged in the Engliſh tongue, and entred and enrolled in Latine. And as for our Statutes or Acts of Parliament, the Bills were for the moſt part exhibited in French, and paſſed and enrolled in the ſame language, even till the time of King *H.* 7. And ſo are they printed in *Raſtal's* firſt *Abridgement* of Statutes, publiſhed in the year 1559. But after the beginning of King *Henr.* 7. his reign, we find all our Acts of Parliament recorded in Engliſh. Onely our *Reports* of the Caſes, reſolutions and judgments in the Law, whereof our books of the Law do conſiſt, have ever until this day been penned & publiſhed in that mixt kind of ſpeech which we call the *Law French*; differing indeed not a little from the French tongue, as it is now refined & ſpoken in *France*, as well by reaſon of the words of Art and Form, called the *Terms*

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of the Law, as for that we do ſtill retain many other old words and phraſes of ſpeech which were uſed 400 years ſince, and are now become obſolete and out of uſe among them, but are grown by long and continual uſe ſo apt, ſo natural, and ſo proper for the matter and ſubject of theſe *Reports*, as no other language is ſignificant enough to expreſſe the ſame, but onely this *Law French* wherein they are written.

And this is the true and onely cauſe why our *Reports* and other Books of the Law for the moſt part are not ſet forth in Engliſh, Latine, or the modern French, for that the proper and peculiar phraſe of the Common Law cannot be ſo well expreſt, nor any Caſe in law be ſo ſuccinctly, ſenſibly, and withall ſo fully reported, as in this ſpeech, which is indeed mixt and compounded of all theſe 3 languages. Which reaſon hath not been wel underſtood by thoſe who object it as a fault to the Profeſſors of our Law, that, forſooth, they write their *Reports* and Books of the Law in a ſtrange and unknown tongue, which none can underſtand but themſelves, to the end that the people, being kept in ignorance of the Law, may the more admire their skill and knowledge, and eſteem and value it at a higher price. As *Cicero* in his firſt book *de Oratore* doth teſtifie, that the like conceit was held of the firſt Profeſſors of the *Civile Law*, *Quia veteres illi qui huic ſcientiæ præfuerunt, obtinendæ atque augendæ potentiæ ſuæ cauſa, pervulgari artem ſuam noluerunt.* And *Cæſar*, ſpeaking of the *Druides*, who were Judges and Interpreters of the Law among the ancient *Britans*, doth report of them, that though they ſpent twenty years in the ſtudie of thoſe Laws, *Non exiſtimabant fas eſſe ea literis mandare.*

But the weakneſs of this objection againſt the authours of our Law-books will eaſily appear, if we conſider how eaſie the *Law French* is to be learned: inſomuch that the meaneſt wit that ever came to the ſtudy of the Law, doth come to underſtand it almoſt perfectly within ten days without a Reader. So as we do not ſeal or lock up the myſteries of our Law in *Hieroglyphicks*, or in a dark Language that cannot be underſtood: but we expreſſe the Caſes, Arguments and Judgements of the Law in a form of ſpeech ſo plain, ſo ſignificant, and in a Tongue ſo ſoon learned by any man, that can ſpeak Engliſh and underſtand Latine, as I dare ſay there is no rationall Science in the world, having ſo many words and Terms of art

and form, that is ſo clearly delivered in any language. And I may truly ſay withall, that if the Books of our Law were all tranſlated into Engliſh, they would not be better, nay, they would not be ſo well underſtood by the Students thereof, as in this proper and peculiar Language wherein they are now written.

And as this Objection touching the Speech or Language wherein our *Reports* are penned doth ariſe out of ignorance of the cauſe thereof, as it is before declared; ſo are there other vulgar imputations caſt upon the Law & Lawyers, which may be as eaſily cleared, as having indeed no other ground but the meer miſunderſtanding of ſuch as are ſtrangers to the Profeſſion: namely, 1. That there is much *Uncertaintie* in the Reaſons and Judgements of the Law; 2. That there are extream and unneceſſarie *Delays* in the proceedings of the Law. 3. That many *bad and diſhoneſt Cauſes* are *wittingly defended* by the Profeſſors of the Law. But *Sapientia juſtificatur à filiis ſuis.*

1. Therefore firſt, touching the *Incertaintie* of the Law; Certain it is that Law is nothing but a Rule of Reaſon, and humane Reaſon is *Lesbia Regula*, pliable every way, or like a Cup with two eares, as the French proverb is, which may be taken up on either ſide, as well with the left hand as with the right: ſo that not onely the knowledge of the Law, but all other rationall Sciences that are ſubject to Argument and Diſcourſe, muſt needs be ſubject to uncertaintie and to errour: And therefore upon Judgements given in our ordinarie Courts of Juſtice, the Law doth admit and allow *Writs of Error* to be brought, without any touch or diſhonour to the Judges, though their Judgments be reverſed for errour in point of Law.

Howbeit there is no Art or Science that ſtandeth upon diſcourſe of reaſon that hath her Rules and Maximes ſo certain and infallible, and ſo little ſubject to divers interpretations, as the Common Law of *England*; as it is obſerved by the Lord Chief Juſtice *Coke*, in his Preface to the 2. part of his *Reports*, That in all his time there have not been moved in the Courts of Juſtice in *England* two queſtions touching the right of *Diſcents* or *Eſcheats*, or the like fundamentall points of the Common Law. So certain, ſure and without queſtions are the Principles and Grounds thereof.

But whence then do ſo many debates and controverſies ariſe? where-

whereupon do we plead and contend ſo much in the Courts of Juſtice, if there be ſo few Doubts and Uncertainties in Law? Doubtleſs this queſtion is ſoon reſolved by one plain and common diſtinction. In all the Cauſes that are controverted there is either *Quæſtio Juris*, or *Quæſtio Facti*. But for one Cauſe wherein a *Queſtion of Law* doth ariſe that needeth much debating, there are a thouſand Cauſes at leaſt wherein the *Fact* is onely in queſtion, and wherein, if the truth of the Fact were known, the Law were clear and without queſtion. So as the pleading and contention in *Weſtminſter-Hall* and the reſt of the Courts of Juſtice in both Realms is for the moſt part touching matters of Fact: In the *Chancerie*, whether there be Truſt or no truſt, Fraud or no fraud; in the *Star-Chamber*, whether a Riot or no riot, Forgerie or no forgerie, Perjurie or no perjurie: and the like matters of Fact come onely in queſtion in all other Courts which proceed to the hearing and determining of Cauſes by the examination of Witneſſes. And in the Courts of Law where the triall is by Jurours, are there not a thouſand *Iſſues* joyned upon matters of Fact, for one *Demurrer* that is joyned upon a point in Law? And when all theſe *Iſſues* are tried either at the Bar or at the Aſſiſes, how many hundreds of *generall Verdicts* are there given which determine matters in Fact, for one *ſpecial Verdict* whereupon do reſult queſtions in Law?

And again, of all the queſtions in Law which do ariſe upon Demurrers or ſpeciall Verdicts, or which are moved in *Arreſt of Judgment*, how many of them are there over-ruled upon the firſt opening or putting of the Caſe? and how few of them are there that are malleable, or can endure the hammer, ſo as they come to be ſolemnly argued at the Bar and at the Bench? As for the *Exchequer-Chamber*-Caſes, which are of ſuch difficulty as that they draw an aſſemblie of all the Judges of the Law for the reſolution thereof, they are ſo rare, as ſcarce twice in a year are thoſe Judges drawn out of their proper Courts to deliver their opinions upon thoſe doubtfull points. So as it is to be aſcribed to the great learning, wiſedome, gravitie and conſtancie of our Judges, and to the Certaintie and excellent Harmony of reaſon in our Law, that there are no more diverſities of opinion among the Judges, or doubtful queſtions in the Law then there are.

For if the Rules & Maximes of the Law were a thouſand times

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as many as they be indeed, yet would they carry no proportion with the infinite diverſitie of mens Actions, and of other accidents which make the Caſes that are to be decided by the Law. Beſides, it muſt be a work of ſingular judgement, to applie the Grounds and Rules of the Law, which are fixt and certain, to all humane acts and accidents, which are in perpetuall motion and mutation.

And therefore we may truly ſay for the honour of our Law, notwithſtanding that vulgar imputation of *Incertaintie*, that the judgement and reaſon of it is more certain then of any other humane Law in the world: as well becauſe the Grounds of our Common Law have from the beginning been laid with ſuch deep wiſedom, policie and providence, as that they do provide for and meet with almoſt all Caſes that can poſſibly fall out in our Commonwealth; as alſo becauſe thoſe Grounds are ſo plain and ſo clear, as that the Profeſſors of our Law have not thought it needfull to make ſo many Gloſſes and Interpretations thereupon as other Laws are perplexed and confounded withall: which Gloſſes, as one doth well obſerve, *do increaſe doubt and ignorance in all Arts and Sciences*. And therefore the *Civilians* themſelves confeſs, that their Law is *a ſea full of waves*; the Text whereof being digeſted into ſo many Volumes, and ſo many Doctours interpreting the Text, and twice as many more commenting upon their Interpretations, and ſo Gloſs upon Gloſs, and Book upon Book, and every Doctour's opinion being a good authoritie fit to be cited and vouched among them, muſt needs breed diſtraction of opinions, and Uncertaintie in that Law. The like may be ſaid of the *Canon* Law, albeit the Text thereof be ſcarce four hundred years old. But of the Profeſſours of our Law, who ever yet hath made any Gloſs or Interpretation upon our Maſter *Littleton*? though into that little Book of his he hath reduced the principal Grounds of the Common Law, with exceeding great judgement and authority, and with ſingular method and order: and yet if he had been an Authour in the Civil or Canon Law, I dare ſay there had been, by this time, ſo many Comments and Gloſſes made upon him, as the Books written upon this Book onely would have been more in number then all the Volumes of our Law at this day.

But the learned men in our Law have ever thought that *Littleton*, being a learned and reverend Judge, wrote with a purpoſe

to

to be underſtood; and that therefore another man, eſpecially if he were of leſs learning then he, could hardly expreſs him better then he hath expreſſed himſelf. And therefore his Book hath ever been read of our youngeſt Students without any Commentary or Interpretation at all.

But for all this, it is objected that our later Judgments do many times croſs and contradict the former directly, in one and the ſame point of Law, which is a manifeſt argument of Incertainty in the Law.

Aſſuredly there are very few precedents of ſuch contrary Judgements, ſcarce two in one Age. And yet if the reaſons of the later Judgements did appear of Record, we ſhould find them grounded upon miſchiefs and inconveniences ariſing ſince the former Judgements, or upon other weighty conſiderations reſpecting the good of the Commonwealth in general. Otherwiſe there are no Judges in any State or Kingdome under the Sun that do more reverence the Opinions and Judgements of their predeceſſors, then the Judges of *England* have ever done: as your Lordſhip for their honour hath obſerved in that moſt worthy Speech of the *Poſtnati*, wherein, among other things, your Lordſhip doth note the memorable ſaying of *Askue*, 37 *Hen.6. fol.* 22. "Such a Charter hath been al-"lowed in the time of our predeceſſors, who were as ſage and "learned as we be; and of *Markham*, 4 *Ed.4. fol.*41. "It is "good, ſaith he, for us to doe as it hath been uſed in former "time, and not to keep one way one day for one party, and "another day the contrary for the other party: the former "precedents are enough for us to follow.

But on the other ſide, let us hear what a learned Canoniſt, *Lodovicus Gomez*, *in Regula de Triennali poſſeſſore*, *cap.*5. is bold to ſay: *Non eſt inconveniens* (ſaith he) *judicium eſſe uno tempore juſtum, & poſtea ejus contrarium juſtius. Et hoc malum videtur imponi mortalibus in pœnam, ut eorum opiniones ſecundum varietatem temporum ſeneſcant & intermoriantur, aliæque diverſæ vel prioribus contrariæ renaſcantur, & deinde pubeſcant. Talis enim eſt humani juris diſciplina, ut nulla in ea opinio eodem ſtatu diu ſtare poſſit. Dies diei eructat verbum, & nox nocti indicat ſcientiam.*

And again, *Opiniones hominum eorum corpora ſequuntur, quæ cum tempore veteraſcunt & pereunt; & ſicut rerum omnium, ita quoque & opinionum eſt quædam viciſſitudo.* And in another place, *Stylus hodiernus*,

hodiernus, propter majorem temporum experientiam, videtur magis jure fundatus. Et ideo ſolet dici, quod moderni ſunt ſicut Culices in capite Elephantis, quæ vident priora & poſteriora: quanto juniores tanto perſpicaciores. And thus much may ſuffice to be ſpoken to remove that ſcandall of *Uncertainty*, which Ignorance doth unworthily caſt upon the Common Law.

2. But if the reaſon and judgement of our Law be ſo little ſubject to Uncertainty, how cometh it to paſs that the proceedings of our Law are ſo much ſubject to *Delay?* For this is another vulgar Objection againſt our Law and the Profeſſours thereof. But who are they that make this objection? have they themſelves been ingaged in any Suits of importance? have they paſſed through the Courts of juſtice either in courſe of Law, or in courſe of Equity? If they have not, they ſpeak but by hearſay, and then their teſtimonie in this behalf is of little credit. If they have had any long-depending Suits of their own, then let them examine whether their own ſpleen and wilfulneſs, or the corruption of ſome needy Solicitors, (who pick their living out of the buſineſs they follow, and are loath to *quench the fire that maketh them warm*) have not rather drawn their Cauſes to an extraordinary length, then the ordinary Proceſs of Law, or the advice of learned Counſell. For ſuch as are learned Counſellours indeed are like good Pilots, who, though their skil be beſt tried in a long and difficult Voiage, do rather deſire fair weather, and a ſpeedy arrivall with their paſſengers in the Haven.

But the troth is, it is the ſtomack or malice of ſuch Clients as will not ſtick to ſay, that they will ſpend all they are worth to have their will of their adverſaries, (and therefore will not be ſatisfied with any Judgement or Decree) that doth produce and prolong Suits in law; who, when their learned Counſell indeed do refuſe to nouriſh that peccant humour in them, do ſeek out diſcarded Impoſtors or Idols, of whom there is an opinion, among light and ignorant people, of extraordinary cunning and ſleight in carrying of buſineſs with advantage, and in curing of foil'd & deſperate Cauſes. Theſe men give them counſel according to their own heart, becauſe they ſooth them in their litigious humour: howbeit in the end, when they have wearied & waſted themſelves, they find how weak thoſe wiles and crafty courſes are, and learn of *Æſop*, that that one onely plain way which the Cat had to eſcape from the Dogs was better & ſafer

then

then thoſe hundred tricks of evaſion whereof the Fox did vaunt before he was taken: and they find withall the ſaying of *Cicero* true, *Ignoratio juris litigioſa eſt potius quam ſcientia.*

Beſides this malignant and unquiet diſpoſition of many Clients, there is another cauſe why Suits are not brought ſo ſoon to an end as perhaps they were in former Ages; namely, *the multitude of Cauſes* now depending in every Court of Juſtice, every of which Cauſes muſt have convenient time allowed, as well to prepare it and make it ripe to be heard or tried, as for the triall and hearing it ſelf. And the true cauſe of the *multitude of Cauſes* doth proceed from this, that the commodities of the earth being more improved, there is more wealth, and conſequently there are more contracts real and perſonal, then there were in former Ages. Beſides, there is more luxurie and exceſs in the world, which breedeth unthrifts, bankrupts, and bad debtors; more covetouſneſs and more malice, which begetteth force and fraud, oppreſſion and extortion, breach of the peace and breach of truſt. Out of theſe fountains innumerable Suits do ſpring, which make the Courts of Juſtice ſo to ſwell: and hence it is that our Statute-laws ſince *Hen.* 8. his time do make up ſo great a Volume; and hence it is that the Profeſſors of the Law are grown withall to ſo great a number; for where there is *magna meſſis*, there muſt be of neceſſity *operarii multi.*

Indeed, if we all lived according to the Law of Nature, we ſhould need few laws, & fewer Lawyers. *Do as thou wouldſt be done unto* were a rule ſufficient to rule us all; and every man's Conſcience would ſupply both the place of an Advocate & a Judge, and then we ſhould ſuffer no coſts of Suit, nor delay of Proceſs.

And again, if we were a poor and a naked people, as many Nations in *America* be, we ſhould eaſily agree to be judged by the next man we meet, and ſo make a ſhort end of every controverſie. When the people of *Rome* were little better then Shepherds and Herdſmen, all their Laws were contained in *Ten* or *Twelve* Ivorie *Tables:* But when they became Lords of all the world, what a world of Books were there written of the *Roman* Civil Law? The like we ſee in every Commonwealth, when it once begins to flouriſh, and to grow rich & mighty, the people grow proud withall, and their pride makes them contentious and litigious, ſo as there is need of many Laws to bridle them, and many Officers to execute thoſe Laws, and many

Lawyers to interpret thoſe Laws, and all little enough: as when a body grows full and groſs, it needs more phyſick then when it was lean.

And yet though our Suits and Cauſes be very many, and our Courts of Juſtice but a few, whereby it muſt needs come to paſs, that every particular buſineſs moving in his turn muſt have the ſlower motion: yet if we compare our Legal proceedings with the proceſs of other Kingdoms and Commonweals, (eſpecially in *France*) we ſhall find that, according to the uſual clauſe in divers Writs, we have indeed *plenam & celerem juſtitiam*, (though *the briefeſt Juſtice be not always beſt*) and that our Cauſes for the moſt part, being orderly purſued, may come to their period in a year, with the courſe of the Sun; when there are many Proceſſes in forrein countries that ſeem to be governed by *Saturn*, which Planet doth ſcarce finiſh his courſe in the ſpace of thirty years. As *Bodin* doth teſtifie of his own country, that there were more Suits in law depending in *France* then in all *Europe* beſides, and that many of thoſe Cauſes were a hundred years old: as that of the County of *Rais*, (ſaith he) which Suit hath been ſo well entertained in all the *Chambers* of *Juſtice*, as albeit the parties that began it are long ſince dead, yet the Suit it ſelf is ſtill alive. Beſides, we have not ſo many *Appeals*, nor ſo many *Reviews* of Cauſes, as the Civil and Canon Laws do admit, neither have we at this day ſo many delays by *Eſſoines*, *Vouchers* and *Protections*, as were in uſe in former Ages, when Titles of land were tried onely in *Actions real*, which are now grown almoſt out of uſe, and a more ſpeedy courſe of trial invented by *mixt* and *perſonal Actions*.

Laſtly, there is no Nation in the world (I ſpeak for the honour of our Nation and of our Land) that hath a courſe of Juſtice ſo ſpeedy, and withall ſo commodious and eaſie for the ſubject, as our Trialls by *Aſſiſe* and *Niſi prius* are. For what Kingdome is there under the Sun, wherein every half year the publick Juſtice doth make her progreſs into every part thereof, as it doth in the Kingdoms of *England* and *Ireland*? whereby it cometh to paſs, that whereas the people of other Countries do travell far to ſeek Juſtice in their fixt and ſettled Courts, as it were at fountains or ciſterns, the ſtreams of Juſtice are derived unto our people, & brought by conduit-pipes or quils even home, as it were, to their own doors. And thus much I thought fit

fit to obſerve for the clearing of that unjuſt imputation of long and unneceſſary *Delaies* in our Legal proceedings.

3. But there is yet another exception againſt the Profeſſors of our Law, namely, That wittingly and willingly they take upon them the *Defence of* many *bad Cauſes*, knowing the ſame to be unjuſt when they are firſt conſulted with and retained. And this is objected by ſuch as preſume to cenſure our Profeſſion in this manner. In every Cauſe between party and party (ſay they) there is a *right*, and there is a *wrong*; yet neither the one party nor the other did ever want a Counſellour to maintain his Cauſe. This may be true for the moſt part, and yet in truth the learned Counſel whoſe fortune it is to light on the wrong ſide may be free from imputation of any blame. For when doth the right or wrong in every Cauſe appear? when is that diſtinguiſhed and made manifeſt? Can it be diſcovered upon the firſt commencement of the Suit, and before it be known what can be alleaged and proved by either party? Aſſuredly it cannot. And therefore the Counſellour, when he is firſt retained, cannot poſſibly judge of the Cauſe, whether it be juſt or unjuſt, becauſe he hears onely one part of the matter; and that alſo he receives by information from his Client, who doth ever put the Caſe with the beſt advantage for himſelf. But when the parties have pleaded and are at Iſſue, when they have examined witneſſes in courſe of equity, and be deſcended to a Trial in courſe of Law, after publication and hearing in the one cauſe, and full evidence delivered in the other; then the learned Counſel of either ſide may perhaps diſcern the right from the wrong, and not before. But then are the Cauſes come to their *Cataſtrophe*, and the Counſellours act their laſt part. And yet until then the true ſtate of the Cauſe on both ſides could not poſſibly be diſcovered.

If then the Cauſes that are proſecuted do for the moſt part hang in a doubtful balance until the hearing or trial thereof, (for if a Cauſe be undoubtedly and apparently naught on the one ſide, no man is ſo unwiſe as to follow it to the end, with the expence of mony and hazard of his credit) how can it be juſtly ſaid, that the Counſellour againſt whoſe Client a Decree or verdict doth paſs hath wittingly defended an unjuſt cauſe, when he wiſt not how the balance would incline, until he had made his uttermoſt defence? Howbeit, if any of our Counſellours do either in the proſecution of their Clients Cauſes give ſiniſter

and crafty Counſel, or upon the hearing or trial thereof make an over-bold defence of any diſhoneſt action, our Judges are ſo tender and jealous of the honour of our Profeſſion, as they lay a note of Infamy upon ſuch perſons, ſo as they ſeldome or never are permitted to riſe to any higher degree in the Law, or any office of truſt in the Commonwealth.

Whereby it comes to paſs, that no men, of any other calling or profeſſion whatſoever, are more careful to preſerve their good name & reputation, and ſtand more preciſely upon their good behaviour, then the learned Profeſſors of the Common Law.

And as our Judges do diſcountenance bad Counſellours, ſo doth our Law abhor the defence and maintenance of bad Cauſes, more then any other Law in the world beſides. For by what other Law is *Unlawful maintenance*, *Champertie*, or *Buying of titles*, ſo ſeverely puniſhed? By what other Law doth the Plaintif *pro falſo clamore*, or *unjuſt vexation*, or the Defendant for pleading a *falſe plea*, pay an amerciament or fine to the publick Juſtice? And this is one cauſe, among others, why our Law doth not allow Counſel unto ſuch as are indicted of Treaſon, Murther, Rape, or other capital crimes. So as never any Profeſſour of the Law of *England* hath been known to defend (for the matter of fact) any Traitour, Murtherer, Raviſher, or Thief, being indicted and proſecuted at the Suit of the King. *Turpe reos empta miſeros defendere lingua*, ſaith the Poet. And therefore it is an honour unto our Law, that it doth not ſuffer the Profeſſors thereof to diſhonour themſelves (as the Advocates and Orators in other Countries do) by defending ſuch Offendours. For example whereof we have extant divers Orations of *Cicero*, one *pro C. Rabirio perduellionis reo*; another *pro Roſcio Amerino*, who was accuſed of Parricide; and another *pro Milone*, who was accuſed of Murther.

But good Lawyers have not with us that liberty which good Phyſicians have: for a good Phyſician may lawfully undertake the cure of a foul and deſperate diſeaſe, but a good Lawyer cannot honeſtly undertake the defence of a foul & deſperate Cauſe. But if he fortune to be ingaged in a Cauſe, which, ſeeming honeſt in the beginning, doth in the proceeding appear to be unjuſt, he followeth the good counſel of the School-man *Thom. Aquinas* 2.2. *Quæſt.* 71. *art.* 3. *Advocatus ſi in principio credidit cauſam juſtam eſſe, quæ poſtea in proceſſu apparet eſſe injuſta, non debet eam prodere, ut ſcilicet alteram partem juvet, revelando*

cauſæ

cauſæ ſuæ ſecreta : poteſt tamen, & debet, cauſam deſerere, vel eum cujus cauſam agit inducere ad cedendum, ſive ad componendum, ſine adverſarii damno.

And thus I conceive that the moſt common and colourable exceptions which are taken againſt our Law and Lawyers may be anſwered and cleared by the plain reaſons and demonſtrations before expreſſed: ſo as our Profeſſion may ſtand and be juſtified in all points againſt Ignorance, Envy, and ill-contented Suitors, who, like cholerick Cheſs-players, when they have had a Mate given them, could find in their hearts to caſt both Cheſs-bord and Cheſs-men into the fire.

Theſe vulgar errours being thus reverſed, ſo as we may truly ſay that there is no ſuch *Uncertainty* in the Rules of the Law, no ſuch *Delay* in the Proceedings, no ſuch *Prevarication* or *Corruption* in the Profeſſors thereof, as is by ſome unjuſtly pretended; why may we not proceed farther, and affirm confidently, that the Profeſſion of the Law is to be preferred before all other humane profeſſions and ſciences, as being moſt *noble* for the matter and ſubject thereof, moſt *neceſſary* for the common and continuall uſe thereof, and moſt *meritorious* for the good effects it doth produce in the Commonwealth?

For what is the matter and ſubject of our Profeſſion but Juſtice, the Lady and Queen of all moral vertues? and what are our Profeſſors of the Law but her Counſellours, her Secretaries, her Interpreters, her ſervants? Again, what is the King himſelf but the clear Fountain of Juſtice? and what are the Profeſſors of the Law but Conduit-pipes deriving & conveying the ſtreams of his Juſtice to all the ſubjects of his ſeveral Kingdoms? So as if Juſtice be rightly reſembled to the Sun in the firmament, in that ſhe ſpreadeth her light and virtue to all creatures: how can ſhe but communicate part of her goodneſs and glory unto that Science that is her Handmaid, and waits upon her? And if Kings be *God's ſcholars*, (as *Homer* writeth) and that the rules of Juſtice be their principal Leſſon; and if God do honour Kings with his own name, *Dixi quod Dii eſtis*, (as a more divine Poet then *Homer* ſingeth) eſpecially for that they ſit upon God's own ſeat when they miniſter Juſtice unto the people; do not Kings again highly honour thoſe perſons whoſe ſubordinate miniſtry & ſervice they uſe in performing the principal part of their Kingly office? Undoubtedly, touching

ching the advancement of ſuch perſons, *Salomon* the King ſpeaketh, that they *ſhall ſtand before Kings*; and God *will ſet them* (ſaith *David*) *with Princes, even with the Princes of his people.*

Neither is this Profeſſion ennobled in regard of the *Dignity of her imployment* onely, but ſhe is to be honoured ſo much the more for the *Neceſſity* and continuall *uſe* of her ſervice in the Commonweal. For if we muſt honour the Phyſician *propter neceſſitatem*, as the wiſe man preſcribeth; much more muſt we honour (for the ſame cauſe) the Profeſſors and Miniſters of the Law. For neither do *all men* at any time, nor any one man at *all times*, ſtand in need of the Phyſician; for they that are in health (which are the greateſt number of men) *non egent medico*, ſaith the great Phyſician of our ſouls, and our onely Advocate which is in Heaven: But *all men* at *all times* and in *all places* do ſtand in need of Juſtice, and of Law which is the rule of Juſtice, and of the Interpreters and Miniſters of the Law, which give life and motion unto Juſtice.

For do not *all perſons* ſtand in need of Juſtice, when without her rule the Prince himſelf knows not how to rule, nor his people how to obey? when without her ſupport the Nobleman cannot uphold his honour, nor the common ſubject hold his liberty? when without her ſafeguard the rich man cannot be free from ſpoil, nor the poor man from oppreſſion? briefly, when without her no man living, be he vertuous or vicious, can enjoy his life, nor any thing that makes his life delightful? For the covetous man cannot encreaſe his profit, nor the ſenſual man enjoy his pleaſures, but under the ſhadow of her wings.

Again, is not Juſtice needfull *at all times*, when we can neither travell ſafely by day, nor ſleep ſecurely by night, without her protection? when if ſuch a Law were made indeed, as was propounded by a wicked Emperour, *That all Laws ſhould ceaſe for four and twenty hours*, that ſhort ceſſation would be ſufficient to give opportunity to wicked men to make a greater combuſtion in the whole world, then that which happened when the Chariot of the Sun did want a guide but half a day, as it is lively expreſſed in the fable of *Phaëthon?*

Laſtly, is not Juſtice neceſſary *in all places*, when we cannot without perill make a voiage by ſea, unleſs ſhe waft us; nor a journey by land, unleſs ſhe convoy us? when we ſhould be

be oppreſt by force in the countrey, if ſhe did not defend us; and undone by fraud in the citie, if ſhe did not relieve us? when ſhe encloſeth every man's garden and field, and makes every man's cottage his caſtle of defence? So as we have not ſuch a univerſal and continual uſe either of the light of the Sun, or of fire and water, as we have of the light and heat and comfort of Juſtice: for a man may remain alive ſome hours without the uſe of thoſe common benefits; but a Commonwealth, wherein each private man's weal conſiſteth, cannot ſtand and continue one minute of an hour, if Juſtice, which is her ſoul, be departed from her.

If therefore Juſtice, and the Law, which is but a Rule or Leſſon of Juſtice, be ſo neceſſary for all *perſons*, *times*, and *places*, as no family, no City, no Commonwealth, no Kingdome, can ſtand without the ſupport thereof; how needfull is the ſervice of learned men in the Law, without which Juſtice it ſelf cannot poſſibly ſtand? for *Juſtitia periret* (ſaith the Preſident *Caſſaneus*) *ſi deeſſet qui Juſtitiam allegaret.* For if no man did ſtudy the reaſon of the Law, if no man kept in memory the rules of the Law, if no man knew the form of pleading or the courſe of proceeding in the Law, what would become of the publick Juſtice in a ſhort time? or how ſhould the benefit of the Law be derived & communicated unto the people? For as in a naturall body, the reaſonable ſoul cannot uſe or tranſmit any of her powers but by ſpeciall Organs of the ſame body, diſpoſed & fitted by nature for every function, as the eye to ſee, the ear to hear, the tongue to ſpeak, and the like of the reſt: ſo in the body politick of a Commonwealth, the Law, which is the ſoul thereof, produceth no effect or operation at all, but by ſuch of her Miniſters as by art and experience are enabled and qualified for her ſervice. For *Lex eſt Juſtitia inanimata*, ſaith the Schoolman; *Lex eſt mutus magiſtratus*, ſaith *Cicero*. The Law of it ſelf is dumb, & ſpeaks not but by the tongue of a learned & eloquent Lawyer: ſhe is deaf, and heareth no complaints but by the eare of a grave and patient Judge: ſhe is blind, and ſeeth no enormities but by the eye of a watchfull and diligent Officer.

Again, the Law is nothing elſe but a Rule which is made to meaſure the actions of men. But a *Rule* is dead, and meaſures nothing, unleſs the hand of the Architect do apply it. It is indeed an excellent Inſtrument to make harmony and concord in the

the Commonwealth : but the beſt Lute that ever was made could never make muſick of it ſelf alone, without the learned hand of the Lute-player.

Therefore though *Jupiter* (as *Protagoras* in *Plato* telleth us) did firſt invent and give the Law, yet was *Mercury* ſent with that heavenly gift, to deliver it over unto mankind. So as it is manifeſt, that without the miniſtry of theſe *Mercuries*, of theſe Interpreters of the Law, namely the learned Profeſſors thereof, there can be no uſe or application of the Law, and conſequently the Law or Juſtice it ſelf cannot conſiſt without them.

But as the eſtimation and price of this Profeſſion is exceedingly raiſed by the neceſſarie and univerſal uſe thereof, ſo do her great *Merits* to the Commonwealth deſerve a far greater exaltation of honour. For firſt, the Commonwealth is indebted to the Law for all her Temporall bleſſings and felicities whatſoever: for all our peace, plentie, civilitie, and moral honeſtie, dependeth upon the Law. That we enjoy our lives, our wives, our children, our lands, our goods, our good names, or whatſoever is ſweet and dear unto us, we are beholden unto the Law for it. *Quid ſunt Regna niſi latrocinia, ſine juſtitia?* ſaith Saint *Auguſtine*. Without Juſtice the Land would be full of Thieves, the Sea full of Pirates, the Commons would riſe againſt the Nobilitie, the Nobilitie againſt the Crown: we ſhould not know what were our own, what another man's; what we ſhould have from our Auncеſtors, what we ſhould leave to our children. *Major hæreditas venit unicuique noſtrum à Jure & legibus, quam à parentibus*, ſaith *Cicero*. In a word, there would be nothing certain, nothing ſure, no contracts, no commerce, no converſation among men, but all Kingdoms and States would be brought to confuſion, and all humane ſociety would be diſſolved.

But on the other ſide, the Law is a fortreſs for the weak to retire unto, a Sanctuary for the oppreſſed to flie unto; it reſtraineth the boldneſs of the inſolent, it tieth with manacles the hands of the potent, and, like *Orpheus*'s Harp, or *Noah*'s Ark, it charmeth the fierceneſs of the Lion and the Tiger, ſo as the poor lamb may lie in ſafety by them.

If then the Law it ſelf doth merit ſo highly of all mankind in general, for that it is the Fountain of all theſe benefits, what do the Profeſſours of the Law deſerve, which draw theſe benefits

benefits out of that fountain, and derive the ſame unto every particular perſon? *Nam ſi non habes quo hauries, & puteus altus eſt*, as the woman of *Samaria* ſaith of *Jacob*'s well in the Goſpel, how canſt thou refreſh thyſelf with the water of that well? *Si veritas ſit in profundo demerſa*, as *Democritus* was wont to ſay, If humane actions be ſo carried in clouds, as it is hard to find what is true, and what is falſe, and when the truth of the fact is found, it is as hard many times to diſtinguiſh what is juſt, and what unjuſt; if in all Cauſes that come in queſtion, either *quæſtio Facti* or *quæſtio Juris* muſt firſt be decided, before a man can receive the benefit of the Law; (for, as the Wiſe man ſaith, *Deus fecit hominem rectum, ſed ipſe miſcuit ſe infinitis quæſtionibus:*) what a meritorious work is it to reſolve theſe troubleſom Queſtions which ariſe in the civil life of man, either by laying open the truth of the Fact, or by clearing the doubt of the point in Law, that ſpeedy and equal Juſtice may be done unto all, and every one may have and enjoy his own in peace? How often would the truth be concealed and ſuppreſſed, how oft would fraud lie hid and undiſcovered, how many times would wrong eſcape and paſs unpuniſhed, but for the wiſedom and diligence of the Profeſſours of the Law? Doth not this Profeſſion every day comfort ſuch as are grieved, counſel ſuch as are perplexed, relieve ſuch as are circumvented, prevent the ruine of the improvident, ſave the innocent, ſupport the impotent, take the prey out of the mouth of the Oppreſſour, protect the Orphan, the Widow, and the Stranger? Is ſhe not *oculus cæco, & pes claudo*, as *Job* ſpeaketh? Doth ſhe not withall many times ſtretch forth *brachium ſeculare* in the defence of the Church and true Religion? All which are works of mercy, and of ſingular merit. Again, doth ſhe not regiſter and keep in memory the beſt *Antiquities* of our Nation? doth ſhe not preſerve our ancient *Cuſtomes* and *Form of Government*, wherein the wiſedome of our Anceſtors doth ſhine far above the policy of other Kingdoms? Are not the Records of her acts and proceedings ſo precious, as they are kept in the King's Treaſury, like Jewells of the Crown, and reputed a principal part of the Royal Treaſure? Laſtly, is not a worthy Profeſſor of the Law a Star in the firmament of the Commonwealth? Is he not *lux in tenebris* whereſoever he dwelleth? Is not his houſe as it were an Oracle, not onely to a Town or City, but to a whole

Country round about him? So as he may truly ſay of the people that ſeek his Counſell, as *Apollo Pythius* ſpoke in *Ennius* of ſuch as reſorted unto his Temple,

Suarum rerum incerti, quos ego ope meâ
Ex incertis certos, compoteſque conſilii,
Dimitto, ne res temere tractent turbidas.

Therefore one of the *Roman* Emperours doth not without cauſe give this honourable teſtimony of the Profeſſors of the Law, *Advocati, qui dirimunt ambiguas facti a cauſarum, ſuæque defenſionis viribus tam publicis in rebus quam in privatis lapſa erigunt, fatigata reficiunt, non minus humano generi provident, quam ſi præliis atque vulneribus patriam parenteſque ſalvarent: neque enim ſolos noſtro Imperio militare credimus qui gladiis, clypeis & thoracibus utuntur, ſed etiam Advocatos. Militant namque cauſarum Patroni, qui laborantium ſpem, vitam & poſteros defendunt.* For if it be a worthy deed (as doubtleſs it is) for a man to defend his Friends or Country with his right hand and his ſword onely; what an excellent ſervice is it to defend them with his ſpeech, his reaſon and wiſedome, wherein the excellency of man doth principally conſiſt?

Therefore both the Schoolman and the Politick do prefer Juſtice before Fortitude; and the Statute of 31 *Hen.*8.*ca.*10. which ranketh the great Officers of the Kingdome in their due places, doth place the Conſtable and Marſhal beneath the Chancellour in all aſſemblies of counſell: for *ille ſemel*, (ſaith *Cicero*, ſpeaking of the martiall man) *hic ſemper proderit reipublicæ*, meaning the Learned man of the Long Robe.

And in very truth, as the Commonwealth is much beholden to the Profeſſion of the Law, ſo are the Profeſſors of the Law not a little beholden to the Commonwealth. For if they procure and preſerve her peace and her plentie, doth not ſhe requite them again with riches and with honour? Doth ſhe not advance them to her chief Benches and Offices, and truſt them with the livelihood & lives of all her people? Neither do our learned men of the Law grow to good eſtates in the Commonwealth by any illiberal means, (as Envy ſometime ſuggeſteth) but in a moſt ingenuous & worthy manner. For the Fees or Rewards which they receive are not of the nature of Wages or Pay, or that which we call *Salary* or *Hire*, which are indeed

duties

duties certain, and grow due by contract for labour or ſervice; but that which is given to a learned Counſellour is called *honorarium*, and not *merces*, being indeed a gift which giveth honour as well to the Taker as to the Giver: neither is it certain or contracted for; no price or rate can be ſet upon Counſel, which is unvaluable and ineſtimable, ſo as it is more or leſs according to circumſtances, namely the Ability of the Client, the Worthineſs of the Counſellour, the Weightineſs of the Cauſe, & the Cuſtome of the Country. Briefly, it is a Gift of ſuch a nature, and given and taken upon ſuch terms, as albeit the able Client may not neglect to give it without note of ingratitude, (for it is but a Gratuity or token of Thankfulneſs) yet the worthy Counſellour may not demand it without doing wrong to his reputation; according to that moral rule, *Multa honeſtè accipi poſſunt, quæ tamen honeſtè peti non poſſunt.*

Laſtly, it is an infallible argument that the Eſtates of ſuch as riſe by the Law are builded upon the foundation of Vertue, in that God's bleſſing is ſo manifeſtly upon them, not onely in raiſing, but in preſerving their houſes and poſterities: whereof there are examples not a few, and thoſe not obſcure, in every Shire of *England*, and of the *Engliſh Pale* in this Kingdome of *Ireland*.

If then our Common Law of *England* be clear from thoſe vulgar Imputations which Ignorance doth conceive and Envy report thereof; if the Profeſſion or Science of the Law be more *noble*, more *neceſſary*, more *meritorious*, then any other temporall Art or Science; & if the dignity of the Profeſſion do accordingly dignifie all the Profeſſors thereof, which are qualified with learning & vertue fit for ſo worthy a Calling; (for ſuch as are ignorant or diſhoneſt, as they are to receive no grace by the Profeſſion, ſo the Profeſſion is to ſuffer no diſgrace by them) how highly is that perſon honoured, whoſe true merit hath advanced him to the moſt tranſcendent place of honour that can poſſibly be attained by that Profeſſion? This is that *Great place* or *Office* which your Lordſhip moſt worthily holdeth (& long may you hold the ſame) under His Majeſty: which though it be the higheſt pinacle of honour that any ſecular perſon of the Long Robe can *in re* or *ſpe* aſpire to, under any Monarch; yet was it given unto your L^p^. *nec expetenti, nec expectanti*, by the wiſeſt & moſt renowned Queen that ever reigned in *Europe*;

who leaving her Crown, together with the faithfull Servants thereof, unto the wiſeſt and juſteſt King upon earth, His Majeſty, in his infallible judgement and wiſedom, confirmed this honourable Office unto your Lordſhip, not onely with a fulneſs of grace to *your ſelf*, but with an augmentation of honour to your *poſterity*. For what increaſe of honour can the *Lord Chancellour* receive in his own perſon, being that in *England* which *Joſeph* was in *Ægypt*, the ſecond perſon of the Realm in the adminiſtration of all Civil affairs? being made (as it were) chief Steward of his Maſter's houſe, the chief Diſpenſer of his bounty and juſtice, by the delivery and cuſtody of the Great Seal, which may properly be called the *Key of the Kingdome*? being the ſole Judge of that High Court which is *Sedes miſericordiæ*, and therefore exalted above all ſeats of Juſtice; where he hath *poteſtatem abſolutam*, as well as *regulatam*, in binding and looſing the proceedings of the Law, and in deciding of Cauſes by the rules of his own Conſcience?

Briefly, what can there be more *done to the man whom the King will honour*? Is he not *ad latus Principis*, to attend him? is he not *Auricularius Principis*, to adviſe him? Doth not the King make him a *Conduit of his wiſedome*, when he uſeth his voice & tongue to declare his Royall pleaſure? and doth he not make him an *Organ of his goodneſs*, when he truſteth him with his mercy & conſcience, in ſweetning the bitter waters of *Summum jus*, and in mitigating the rigour of the Law unto his people? In a word, doth he not repreſent *reverentiam Principis*, in the power and authority of his Office? and do not the people fear and honour the King even in the gravity and dignity of his perſon? And are not all theſe honours made more honourable, and exceedingly raiſed in true eſtimation and value, when the ſame are enjoyed in a moſt famous and flouriſhing Commonwealth, and do proceed as Sun-beams from the moſt religious, learned, wiſe, the moſt renowned and excellent King of the world? If then the greateſt honours do of right belong to the greateſt vertues, (for what is Honour but *a reflexion and reward of Vertue?*) how vertuous a perſon muſt he be, with what gifts and graces, with what abilities and ornaments, both of art and nature, muſt he be endowed, who can worthily ſupply that great and honourable Office?

Aſſuredly, beſides the naturall faculties and powers of his mind,

mind, which he ought to have in great perfection, and beſides the outward comelineſs & dignity of his perſon, (for *Gratior eſt pulchro veniens è corpore virtus*, & *Sapientia hominis lucet in vultu ejus*, ſaith *Solomon*,) he muſt be furniſhed with all Learning that hath any relation to the publick good, Divinity, Law, Policy, Morality, and eſpecial Eloquence, to impart and communicate all the reſt. He muſt withall have a long and univerſal experience in all the Affairs of the Commonwealth: he muſt be accompliſhed and abſolute in all points of Gravity, Conſtancy, Wiſedome, Temperance, Courage, Juſtice, Piety, Integrity, and all other Vertues fit for Magiſtracy and Government; yet ſo as the ſame be ſeaſoned and tempered with Affability, Gentleneſs, Humanity, Courteſy; howbeit without deſcending or diminiſhing himſelf, but ſtill retaining his dignity, ſtate and honour. Briefly, he muſt be a perſon of ſuch vertue and worthineſs, as his life may be a *Cenſure*, and his example a *Mirrour*, for all other Magiſtrates. Theſe are the excellencies and perfections wherewith that great Officer muſt be qualified and adorned. And this *Idea* have I conceived of him, not out of mine own imagination, or weak diſcourſe of reaſon, but out of an humble obſervation of your Lordſhip, in whom not onely thoſe abilities and Vertues before expreſſed, but many other graces and ornaments, do ſhine ſo brightly, as the weakeſt judgement may collect out of the ſame a moſt excellent Pattern of a moſt excellent *Chancellour*.

But perhaps it would be thought more comely for me to pronounce this of your Lordſhip to others collaterally, then to ſpeak it to your Lordſhip of your ſelf directly, (though what can I declare in this kind to others, but that which the world hath long ſince known and acknowledged?) yet is there no man living whom it may better become then my ſelf, to praiſe and honour your L^P. every way, whoſe favour hath been (as it were) a good Angel unto me, and to whom I ſtand bound for ſo many benefits, as that which might carry a ſhew of Adulation in another, muſt needs be thought but Duty and Gratitude in me.

Howbeit, beſides my particular obligation, there is no Profeſſor of the Law that is not obliged to doe your Lordſhip all honour, for the honour you have done to the Profeſſion of the Law, whereof your Lordſhip hath been, during all your time, a principal Light and Ornament.

And

A Preface Dedicatory.

And now (my moſt honourable good Lord) my devotion to the Profeſſion of the Law, & to your Lordſhip, the moſt noble Patron of the Profeſſors thereof, having enlarged this Diſcourſe beyond the meaſure & limits of an Epiſtle, (& therefore I give it the name of a *Preface*) it remaineth that I preſent unto your Lordſhip the rude collection of a few ſelected Caſes, which ſince the beginning of His Majeſtie's Reign have been argued, reſolved and adjudged in this Realm of *Ireland*.

Theſe are the Firſt-fruits of my labour in this kind of learning, and are therefore a due & proper oblation to your Lordſhip, for that my ſtudies have yielded the better fruit, being cheriſhed by the Sun-beams of your Lordſhip's favour. This is alſo the firſt *Report of Caſes* ariſing in *Ireland*, & ruled in the Courts of Juſtice there, that ever was made and publiſhed to the world, ſince the Laws of *England* were firſt eſtabliſhed in this Kingdome. Laſtly, I have made choice of ſuch ſpecial Caſes as are either proper for this Kingdome onely, or elſe do contain for the moſt part points of Learning not common, or at leaſt not largely debated, in our Books of the Law.

But foraſmuch as *Natura incipit ab imperfectis*, as the Schoolman ſaith, therefore theſe weak and imperfect beginnings do ſeek your Lordſhip's protection, till time ſhall give them more ſtrength and reputation. In the mean time, if your Lordſhip's Judgement ſhall allow the publication hereof, I ſhall have the leſs cauſe to doubt the cenſure of any other, ſpecially of my Maſters of the Law in *England*, if any of theſe Books happen to come to their hands; to whom I may truly make this proteſtation, That theſe Caſes, being reſolved and adjudged in the Courts of Juſtice in *Ireland*, are not collected and publiſhed be me to increaſe the number of the Books of Law in *England*, or to interrupt the better ſtudies of the Students there, by reading of this Collection, but principally for the uſe and benefit of our practiſers here in *Ireland*, and to move and incite others in this Kingdome by this example, which doth onely open and ſhew them the way, to perform the like ſervice hereafter to poſterity.

Neither have I beſought your Lordſhip's patronage for theſe Caſes of *Ireland* in reſpect of my ſelf onely, but alſo in regard of that relation which your Lordſhip hath unto this Kingdome. For albeit your Lordſhip be *Lord Chancellour of England*, yet

yet the great Seal which you keep there is alſo of force and power within this Realm. Neither can we forget without ingratitude, that your Lordſhip, in that high place of Counſell which you hold in *England*, is upon all occaſions watchfull and carefull of the publick good and welfare of *Ireland*.

Now therefore the onely wiſe God, who hath given unto your Lordſhip thoſe bleſſings which Wiſedome hath in ſtore for them that love her, *Longitudo dierum in dextra ejus, & in ſiniſtra ejus divitiæ & gloria*, preſerve your Lordſhip for many years in health and honour, that you may long continue a prudent and principal Counſellour unto your Sovereign, a loving and provident Father unto your Countrey, a comfort and countenance to your particular friends, and all others who partake of your honourable favours; among which I remain

Moſt bound, and moſt devoted to doe your

Lordſhip all humble Service,

JO. DAVIS.

Trin. 2 Jacobi, in Leschequer.

Le Case de Proxies.

ENTER le Roy & Sir Ambrose Forth, Doctor del Civile Ley, & un des Maisters del Chauncerie, le Case fuit tiel.

Levesque de Meth, devant le dissolution des Monasteries, avoit un Proxie de xv s. iiij d. paiable annualment hors dl Commandrie de Kells in le Countie de Meth, parcel del possessions del Hospitall de S. John de Jerusalem in Ireland; & un aut Proxie d xx s. paiable annualment hors del impropriate Rectory d Trevet in mesme le Countie, parcell del possessions del Abby de Thomascourt in le Countie de Dublin.

Anno 33 H. 8. le dit Hospital de S. John de Jerusalem & le dit Abby de Thomascourt fueront suppresse & dissolve, & touts les possessions des ambideux dits measons fuer vest in le actual & real possession del Corone per Act del Parliamt. Mes in m le Act est un expresse Saving de Proxies al touts Evesques & lour successors.

Apres ceo, l' Evesque de Meth & son Clergie, (car cē Evesquerie nad Deane & Chapter) p fait inroll dat 16. Martii, 36 H. 8. graunt les Proxies avantdit (enter auters) al Roy H. 8. ses hrs & successors; le dit Roy esteant al temps del grant & puis in actual possession del dit Commandry & Rectory, hors de dux les dits Proxies fueront paiable.

Puis, la Roigne Eliz. per ses Letters Patents dat 1. Novembris en l' ann 33. de sa reigne, demise le dit Commandry & Rectory al Doctor Forth, rendant rent, sans ascun reservation des Proxies. Et si ore il serra charge ove les dits Proxies,

& les arrerages dyceux encurrues depuis le commencemẽt de son leas, fuit le question. Et fuit adjudge que il serroit charg'. Et 3 points fuerõt mobe & debate en l' argumẽt de cest Case. 1. Si les Proxies fueront tout oustermẽt extinct per le suppression & dissolution des dits religious mesons de S. John de Jerusalem & de Thomascourt, nient obstant le dit Saving deins l' Act de Dissolution.

2. Si l' Evesque puissoit granter les Proxies al Roy.

3. Si les Proxies fueront extinct en maines del Roy per le Unitie de possession.

1. PUr le primer point, fuit object per le counsel del Sir Ambrose Forth, que les Proxies fueront extinct per le suppression & dissolution de les religious mesons: pur ceo que le Visitation de les religious mesons fuit la sole cause de payment des Proxies; Et cessante causa cessat effectus. Car les religious persons esteaunt deraigne & disperse, ne fueront apres ceo subject al Visitation, & donqs, quant la Visitation ceale, le Proxie, esteant solemẽt un Exhibition done al Visitor pur ses travailing charges, cessera auxi. Car Procuratio (come les Canonists define ceo) est Exhibitio sumptuum necessariorum facta Prælatis, qui diœceses peragrando Ecclesias subjectas visitant.

Uncore ils agreont, que le Visitation ne cessa immediatement per le surrender, ou per l' Act de Parliamẽt que done les religious mesons & lour possessiõs al Corone; car pceo lour Corporations ne fueront dissolve: come est tenus en le Case d Deane & Chapiter de Norwich en le 3. part des Reports de le Seignior Coke, 15 Ass. p. 8. 32 H. 8. Br. Corporations 78. Mes quant les religious persons fueront deraigne, & avoent relinquish lour habit, rule & order, pur queux ils fueront visitable, adonques le Corporation fuit oustermẽt dissolve, & sur ceo le Visitation cessa.

Et ils resemblont le Proxie due pur Visitation al Annuitie pro Consilio, ou pro Servitio impendendo: si le counsell ou le service soit withdrawn, le Annuitie est determin. Issint si Rent charge soit graunt pur un chimin, stopp le chimin, & le Rent charge serra auxi stopp. 9 Ed. 4. 19. 15 Edw. 4. 2. 21 Ed. 3. 7. 45 Ed. 3. 8. Dier 6 H. 8. 2. & 6 Ed. 6. 76. Issint ou Corodie est graunt pur certain service destre fait, omission del service determin le Corodie, 20 Edw. 4. fol. ultimo.

Fuit

Fuit auxy dit, que cest dutie ne fuit annual, mes contingēt, & paiable tantsolement sur chescun Visitation; come escuage sur chescun journey roiall, ou come Aide pur file marier, ou pur faire fits chivaler: en queux darraine cases, si avowrie soit fait pur le Aide, est bone plea en barre de avowry, a dire, que le avowant nad tiel fits ou file en vie al temps del Aide levie. F.N.Br.82.g.

Et pur le Saving, ils diont, que ceo fuit un Flattering Saving, que ne poet preserver les Proxies en esse, queux la Ley ad extinguish; come est ten⁹ 14 Eliz. Dier 313. que les tenures del Obit ou Chauntry terres tenus del subjects sont extinct per lact del 1 E.6. nient obstant le Saving en le dit Act, propter absurditatem: issint les Proxies icy serront extinct propter absurditatem. Car come est absurd que le Roy serra subject al attendance en respect de tenure; issint est absurd que le Roy serra subject al Visitation, ou al ascun dutie en respect de ceo. De mesme le nature sont plusors Savings mise en Walsinghams Case, Plo.Com' 563. queux sont la appell Flattering Savings.

PUr le Second point, fuit object, que le Evesque ne puissoit graunter les Proxies al Roy pur 2 reasons; lun deduce del person del Roy, le auter del person del Evesque. 1. Pur le Roy, admit que il fuit capable de tiel spirituall office, come destre Visitor des Religious persons, uncore il navera Proxies p̄ le inconveniencie, & indecencie, & auxy p̄ le impossibilitie. Car nest convenient ou decent, que les povres Religious persons porteront les charges de Roy; & est auxi impossible. Car per le Canon Ley, Procuratio exhibenda est secundum qualitatem personæ visitantis; & le Majestie del person del Roy & le grandeur d̄ son traine est tiel, que, per presumption del ley, nul private person poet porter ses necessary charges, ou faire a luy entertainement agréeable al quality de son person. Et pur ceo est tenus 27 Hen.8.10.b. que ou common sans number fuit grant al Abbe & ses successors hors del Mannor de Dale, que aprez le dissolution le Roy navera le common sans number: car la est dit, que si le Roy averoit, il puissoit surcharge la terre, que la ley ne voet suffer. Come si un villaine purchase common sans number, le seignior navera ceo, pur le reason avantdit, car donques le terretenant perdroit la profit de sa terre.

2. Pur le Evesque, coment que il poet graunter ses Tempo-

rall possessions ove le assent de son Chapter ou Clergie ; vnt̄ ceux duties queux il ad per prerogative de son Episcopall Chaire, ou come incident a son spirituall function, il ne poet graunter : queux per la rule del Canon Ley sont de 3 kinds. 1. Subsidium Cathedrarium, que est duty de prerogative & superiority : 2. Quarta Episcopalis, que est done a luy pur reparation de les Esglises : 3. Procurationes, pur son Visitation, ut supra, que est perquisite ou profit de son spirituall jurisdiction. Come creation-money done al Duke ou Earle, pur maintenance de son honor, ne poet estre graunt ouster, 6 Henr. 8. Dier 2. a.

PUr le 3. point, ils dient, que coment que Proxie soit un p̄sonal chose, payable tantsolement en respect des persons Visitable ; uncore admit que ceux Proxies sont devenus real, & que le Commaundry & Rectory sont charges ove ceux Proxies, donqs le unitie de possession extinguish eux en mains del Roy : come seigniory, rent charge, common, & similia, sont extinguish per le purchase del terretenant, sil ad equall estate en le terre, & en la chose que charge la terre. Et a cest entent le Case de 2 H. 4. 19. a. fuit mise, ou un Prior ad annuitie hors del parsonage per Prescription ; le parsonage est appropriate al Priory, le annuitie est extinguish a touts jours.

MEs de auter part fuit respond per le counsell del Roy, & Resolve per le Court, que les dits Proxies ne fueront extinguish per le dissolution des dits Religious mesons, mes fueront bien preserve & saves al Evesque : & que Levesq̄ ad eux bien grant al Roy : & que le unitie de possession en maines del Roy feloit forsque un suspension, & nemy extinguishment des dits Proxies.

1. QUaunt al Primer point, primerment fuit observe, que les Proxies naboent lour Originall en le Primitive Church. Car Saint Paul, en visitant touts les esglises queux il ad plant en Asia & Europe, ne demaundoit ascun Proxies, mes laboroit ove ses proper maines pur son sustenaunce, ne serroit burthensome al Esglises. Uncore long temps apres, le Canon Ley, que declare que Proxies sont due al Evesques en lour Visitations, dit que ceo est agreeable

al

al doctrine de S. Paul, ut à quibus Spiritualia recipimus, eiſdem Temporalia communicemus. Inſtit' Juris Canon' libr' 2. c. de Cenſib.

Secondment fuit note, que ceo que nous appellons Proxie ou Procuracy, eſt appell per les Canoniſts Procuratio, pur ceo que ſur cheſcun Viſitation les perſons viſitable procuront neceſſary pꝛobiſions pur les Viſitors: queux pꝛbiſions al pꝛimes fueront fait en refections ou victuals, viz. in eſculentis & poculentis; mes ceo fuit ove meaſure & tẽperance, ne jejuniorum doctrinam rubentibus buccis prædicent, come eſt dit en un ös Canons.

Mes apꝛes, quant le pompe & exceſſe des Viſitors requiroit tant des pꝛobiſions, que fueront greevous & intolerable al Eſgliſes & Religious meaſons, adonques cheſcun Eſgliſe & meaſon fuit reaſonablement taxe, & per ces cheſcun Proxie fuit reduce al certein ſumme de money, payable annualmẽt, en nature de penſion, al Oꝛdinary, que ad le power de viſitation de mero Jure, come eſt dit 10 Eliz. Dier 273. b.

Et ceo fuit aptement reſemble al Socage en noſtre Ley, de que Littleton dit, que en auncient temps, devant le limitation de temps de memoꝛie, grand part de les Tenaunts queux tiendꝛont de lour Seigniours per Socage, devoent vener ove lour Sokes per certaine jours per an, pur arer & ſemer les demeſnes del Seigniour: & pur ceo que tiels oberages fueront fait pur le viver & ſuſtenance de lour Seigniours, ils fueront quites envers lour Seigniours de touts auters ſerbices. Et puis apꝛes tiels ſerbices fueront changes en Deniers, per conſent des Seigniours, & per deſire des tenants, en un annuel rent, &c. Et ſicome les tenaunts en Socage, apꝛes le dit change, payeront lour rents annualment al Seigniour, coment que il ad alien ſes demeſnes, & ad nul terre deſtre are ou ſeme: iſſint les Eſgliſes & Religious meaſons, apꝛes que le pꝛocuration de victuals fuit reduce al ſumme certain, payeront ceo al Oꝛdinarie annualment, coment que il ne feſoit aſcun Viſitation. Et iſſint le Rule de Ceſſante cauſa ceſſat effectus ne tient en ceux Caſes. Et a ceſt entent directment eſt le Caſe de Sir William Capel, miſe en Luttrels Caſe en le 4. part des Repoꝛts de le Seignioꝛ Coke, ou fuit reſolve, que ou home tient certein terre per Rent pur Caſtle-garde, coment que le Caſtle ſoit dirute

ou

ou decay, uncore le rent remaine. Car la est dit, que quaunt le Tenant teignoit del Seigniour de garder ou repaire le Castle del Seigniour, & puis tiel service (come Littleton dit en Case de Socage) fuit en antient temps, per mutuall consent del Seigniour & tenant, change en un annual rent, coment que soit dit rent Pro Warda Castri, uncore le Seignior ne poet aver le Castle-gard arrere quant il voet, mes, apres le composition & change fait, le Castle-gard est tout ousterment ale; & Pro ne import condition, come en le case de annuitie grant Pro consilio impendendo, mes pleine & perpetual recompense & satisfaction. Pur mesme le reason en nostre case, coment que les parsonages impropriate sont fait ore lay fee, & devenus en maines des Lays gents, queux ne sont visitable; & coment que les Religious measons sont suppresse, dissolve, & dirute, come le Castle en Sir William Capels Case; uncore les dits certaine summes de money queux beignont en lieu de Proxies, & retainont le nosme de Proxies, & per antient composition sont fait parcel del certaine & setled revenues del Evesque, remaineront a touts jours, & ne serront subject al extinguishment; nient plus que annuities, pensions, ou portions de Tithes, queux sont pay a cest jour hors del plusors Abbeyes & impropriate Rectories, & les original cause p queux ils fueront graunt ou pay ne serront ore examine, ou brought en question. Et a cest jour le Roy mesme pay & allow Proxies hors de touts impropriations qux il ad en son possession; & pur ceo en chescun lease fait per le Roy del impropriate Rectory, il y ad un covenant del part del lessee, que il portera & payera touts Proxies, Synodals, Pensions, &c. Et Sir Humfrey Winch adonques chiefe Baron disoit, que devaunt le dissolution des Monasteries, ou Rectorie fuit appropriate al Abbey, immediatement le Visitation cessoit quant al Rectorie; car le Abbe ne fuit visitable come Rector, pur son doctrine, mes come Abbe, pur son rule & order: & uncore sans question le Ordinary ad les Proxies hors de touts parsonages appropriate al Abbeys, ci bien devant le dissolution que apres.

Et pur le Saving en le Act de 33 H. 8. cap. 5. ceo nest idle ou Flattering Saving, mes real & effectual: car est agree devaunt, que ceux Proxies fueront en esse al temps del fesans del Act, & nient extinguish per le Surrender des Religious measons

meaſons ; car lour Corporations ne fueront diſſolve tant que les religious perſons ount relinquiſh lour meaſons, & ount eſtre diſperſe: Et donques tiels choſes queux fueront en eſſe al temps del feſans del Act, poent eſtre bien preſerve & ſave per le Act ; coment que choſes extinct devaunt ne poent eſtre revive per un Saving, ſauns expreſſe parolx de Grant & Reſtitution. Et ceſt differente appiert pleinement en le Caſe de Kekewich, 27 Hen. 8. Brook Parliaments 77. Et en Sir John Molins Caſe, en le 6. part des Reports de le Seignior Coke.

2. QUaunt al Second point, fuit reſolve, que les Proxies, en lour originall nature eſteaunt duties payable pur Viſitation, fueront grauntable al Roy, & le Roy fuit capable de tiel graunt ; ſpecialment quaunt les dits duties fueront convert al ſum de money certain, en nature de Penſion ou Annuitie. Car per le auntient Ley del Realm, le Roy ad power de viſiter, reformer & correcter touts abuſes & enormities en le Eſglile: & per les ſtatutes fait en temps Hen. 8. le Corone fuit forſque remitte & reſtore a ſon antient juriſdiction, que fuit uſurpe per le Ebeſque de Rome. 33 E. 3. tit. Ayd del Roy 103. Reges ſacro oleo uncti ſpiritualis juriſdictionis ſunt capaces. Et Proxie eſt profit del Juriſdiction. 10 H. 7. 18. Rex eſt mixta perſona cum Sacerdote. Auxy le Roy aver Tithes per le common ley, de queux nul lay perſon fuit capable. 22 Aſſiſ. pla. 75. 21 Hen. 7. 1. Le Roy meſme viſitera ſes frank Chappels & Hoſpitals. 8 Aſſ. p. 29. N. Br. 42. a. Et Caſſaneus in Catalogo Gloriæ mundi part. 5. conſideratione 24. cite un text del Canon Ley, viz. quod omnes Reges dicuntur Clerici ; & un auter text que dit, quod cauſa ſpiritualis committi poteſt Principi laico.

Et ou fuit dit, que en reſpect del grandeur del Roy & ſon traine, competent Proxies ne poent eſtre exhibit a luy, & per conſequence ne poent eſtre grant a luy ; ceſt objection eſt toll, en ceo que les Proxies al temps de ceſt grant fueront reduce al certeine reaſonable ſummes de money. Auxy le rule del Canon Ley neſt pleinement cite devant, car le rule eſt, Procuratio exhibenda eſt ſecundum qualitatem perſonæ viſitantis, & ſubſtantiam viſitatorum.

Fuit auxy reſolve, que le Ebeſque, ove laſſent de ſõ Clergy, puiſ-

puissoit bien granter les Proxies al Roy, pur ceo que la Ley ad qualifie le person del Roy de receiver tiel grant, coment que ceo soit tiel prerogative del Evesque que ne poet estre assigne al auter person: come le creation-money del Duke ou Counter poet estre graunt & surrender al Roy, coment que ne poet estre graunt al subject. Auxy les Proxies esteaunt ore reduce al certaine summe de Argent, & issint fait part del certaine, setled & perpetual revenue del Evesque, poent estre cybien graunt per luy, come portion de Tithes, ou Annuitie, ou alcun de ses Rents, services, ou auters hereditaments temporall.

3. QUaunt al Tierce point, fuit auxy resolve & adjudge, que le unitie de possession des Proxies ove les Rectories impropriate & religious mesons, hors de queux les Proxies sont payable, ne extinguish les Proxies en maines del Roy, mes suspend le Payment de eux tantum pro tempore, quousque le Roy per son grant ad sever lun del auter.

Pur trover la Ley en cest point, le nature de ceux choses fuit consider queux en alcun manner poent estre subject al Drowning, ou Extinguishment, p Unitie de possession. Et ceux sont de 3 kinds: 1. Estates en terre; 2. Actions reall & titles al terre; 3. Choses issuant ou provenant hors del terre, ou prises & eu sur terre.

1. Estates en terre sont proprement merge ou confound, quaunt meinder estate concurre ove greinder estate en mesme le person, & en mesme le droit: come, Terminus & feodum non possunt constare simul in una eademque persona. Et le pregnant reason de ceo est mise en le Case de Bracebridge Plowd. Com' 319. b. pur ceo que Terme est temps finite, & Fee-simple est temps infinite; & le finite de necessitie covient estre merge & confound en le infinite. Mes ceo est Confounding, & nemy Extinguishment. Car si particular tenaunt graunt ou surrender son Estate al cesty en reversion, le particular Estate nest extinct, coment que soit merge & confound: car si particular tenaunt ad charge le Terre ove rent, ou auter encumbrance, le Estate remainera en esse a cest entent. Et revera Estates en terre, & Droit al terre, sont choses de tiel Substance queux ne poent estre extinct, ou interire penitus,

penitus. Et pur ceo Littleton dit, que ſi Diſſeiſée, quaunt ſon entry eſt toll, releſſa al terretenant tout ſon droit, que ceo ne enurera per voy de Extinguiſhment; car le droit que il avoit paſſa al tenant per ſon Releaſe: Et ſerroit inconvenient, que tiel antient droit ſerroit extinct tout oustterment; Car droit ne poet pas morier.

Mes choſes queux iſſuont hors del terre, come Seigniory, rent charge, &c. ſont ſubject al Extinguiſhment a touts entents. Come ſi Seignior graunt ſon ſeigniorie al terretenaunt & eſtrange, la ſerra nul joyntenancie ou ſurvivor enter eux, car le moietie del Seigniory eſt extinct a touts entents & purpoſes. Plowd. Com' 419.a. Et ſi Seignior releaſe al tenaunt tout ſon droit en le Seigniory, ou en la terre, tiel releaſe va per voy D'extinguiſhment vers touts perſons. Littleton 112.b.

2. Real Actions auxy & Conditions ſõt ſubject al Extinguiſhment, & ceo eſt quaſi per unitie de poſſeſſion. Come en touts caſes de Remitter, la ceſtuy que ad droit de Action pur terre, ad le poſſeſſion de meſme le terre, iſſint que neſt alcun perſon vers que il poet porter ſon Actiõ, & pur ceo le Action eſt Extinguiſh a touts jours.

Et ſur meſme le reaſon, Condition que done title de reenter en terre eſt Extinguiſh per purchaſe del terre, ou part de ceo. 8 H.7.8.b. 33 H. 8. Br. Extinguiſhment 49. Iſſint Garrãty eſt Extinguiſh per rænfeoffement, ou diſcent del terre al meſme le perſon que ad le Garrantie. 40 E.3.13.

3. Choſes iſſuant ou provenient hors del terre, ou priſe & eu ſur terre, ſont de 3 kinds: & ſur ceux different kindes de choſes ſurdont ceux differences.

1. Si les choſes ont lour Originall & commencement hors del terre, & nemy alior, & ſont due en reſpect del terre tantum, & ſont part des profits de terre, tiel choſes ſerront touts foits Extinguiſh per unitie de poſſeſſion, ſi home ad equal eſtate, & un droit en ambideux enſemble. De ceſt nature eſt Seigniourie & reall ſervices, 3 Hen. 6. 1. a. 40 Edw. 3. 40. b. Littl' 49.a. 122. b. 34 Aſſiſ. placit' 15. Rent charge, Littleton 48. b. Dier 140.b. Common, 11 Hen. 4. 5. a. 24 Edw. 3. 25. b. Chimin, 21 Edward.3.a. 11 Henr. 4. 5. a. Et 2 reaſons de ceſt rule ſueront miſe. Un, pur ceo que le choſe que eſt extract hors de terre, quant ceo vient al terre arrere, ſerra naturalment

ment extinct; car est Revolutio ad materiam primam, dont vient le natural Extinguishment, tibien del home, que de touts auters Terrestriall choses. Le auk plus legal reason est, que cestuy que ad touts les profitz entirement ne serra dit daver part ds profits, car part est confound en le tout; & pur ceo hõe ne poet aver seigniory, rent, common, ou chimin en sa terre demesne.

2. Mes del auter part, choses que ne sont issuant hors del terre, come parcel des profits del terre, mes sont deride alios, & due pur auter respect, coment que sont prise & eu deins certaine terre, uncore unitie de possession ne Extinguish tiels choses. De cest nature sont touts Franchises: come si hom ad Warren ou Purlieu en le terre de un auter, & apres purchase la terre, cest unitie de possession ne Extinguish les Franchises, mes il avera eux en sa terre demesne. 28 H.8. Dier 30. b. 16 Eliz. Dier 327. a. 35 H.6. 56. a. Issint est de Waife, Stray, Wreck, Lart, &c.

3. Auxy, coment que chose soit part des profits de terre, & paiable per tiel person tantum que ad le terr̃, uncore si tiel chose ad son commencement & originall pur aliun personal respect, & nemy en respect del Terr', & issint le Person est solemt charge, & nemy le Terre, tiel chose ne serra subject al Extinguishment per unitie de possession: & de cest nature sont Annuities, Dismes, Proxies.

1. Si Annuitie soit grant en fee per apt parols de charger l'heire ou successor, coment que le heire ou successor ne serroit charge sans Assets de terre, uncore, si grantee del Annuitie enter en cest terre, ceo ne suspend ne Extinguish le Annuitie: car le terre nest charge, mes le person en respect del terre: car si le terre fuissoit charge, ne serroit Annuitie tantum, mes rent charge, & serroit recover per distresse & abowrie; quel remedie la ley ne don pur un mere annuitie. Auxy sur assignment ouster de tiel annuitie atturnatt serroit necessarie, que ne besoigne sur assignement del annuitie, come est note per Yaxley 21 H.7. 1. b.

Cest point est fait plus clere 10 E. 4. 10. a. Abbe port Scire facias vers Vicar sur Judgement en Annuitie envers le predecessor del Vicar: le defendant dit, que le Annuitie issuit hors del Mannour de B. & les dismes, oblations & obventions del vicarage, quel Manno & dismes sont le vicarage,

rage; & que le Pl. ad enter en 43 acres parcel del mannor, & ad pris les dismes. Judgement sil execution doet aver. Et tout le Court tient, que nest plea, pur ceo que cest recovery fuit sur briefe de Annuitie: car en briefe de Annuitie le person solement est charge, & nemy le terre; per que adire, que il ad enter en le terre, ou per son suit appiert que le rent ne issuist hors del terre, nest plea. Et est auxy la resolve, que en Annuitie vers Abbe, sur title de prescription, nest plea, que le Pl. ad enter en parcell des possessions del Abbey. Et en annuitie vers heire, coment que il ne serra charge sil ne ad per discent, uncore nest plea adire, que le Pl. ad enter en le terre discendue.

Mes 21 Henric. 7. 1. le case est plus fort: Parson del Esglise fuit charge ove annuitie al auter Parson per prescription: le Parsonage, hors de quel l'annuitie fuit payable, fuit appropriate al Priorie des Aliens, quel Priorie esteant suppresse per Edw. 3. fuit grant per Parliament al Henr. 5. Apres Edw. 4. graunt le Parsonage impropriate al Dean de Saint Stephens, vers que briefe de Annuitie est port p le Parson que avoit l'annuitie per prescription. Et l'opinion del Court la fuit, que l'Annuitie nest extinguish per le graunt del Parsonage al Henr. 5. per Act de Parliament, coment que ne soit Saving de ceo; & que cest annuitie nest done inclusive ove le Rectorie, car le Rectorie ne fuit charge ove le annuitie, mes le person del Rector tantum. Et coment que le payment de cest Annuitie soit suspend en maines del Roy, uncore quaunt le Roy ad graunt le Parsonage ouster, serra revive.

2. Quaunt al Dismes, ceux sont part des profits de terre, & sont probenant & renovant de & hors del terre, uncore ne serront extinct per unitie de possession, pur ceo que sont originalment due en personal respect. Car le Ignorance & Weaknesse des lay persons, que besoigne de aver Instruction & Confirmation en matter de Religion, fuit le original cause del payment de Tithes. Et le Parson de Esglise ne claime Tithes en respect del terre, mes en respect del person de parishioner. Et que unitie de possession ne extinguish Tithes, vide 30 H. 8. Dier 43. 32 H. 8. Br. Dismes 17.

3. Cest case de Dismes est un Parallell del Case de Proxies, & concurre ove ceo en touts points. Car sicome Instruction fuit le cause de payment des Dismes; issint Visi-

tation, que fuit touts foits accompany ove inſtruct̄, Littl. ca. de Frankalmoigne 30. b. fuit le cauſe ꝺ Proxies. Et ſicome diſmes ſont oze due & payable al lay perſons q̄x ont purchaſe impzo-pziate Rectozies, com̄t que ils ne donont alcun Inſtruction; iſſint Proxies ſont due & payable al Ordinaries hozs del im-ppziations & religious meaſons diſſolved, com̄t que lour Viſitation ceſſa. Et ſicome nul poet pzeſcribe ꝺ non decimando, come eſt communement dit in nr̄e Libzes; iſſint le Canon Ley ad un rule, Qd' nulla eſt adverſus procurationem præſcrip-tio. Inſtit. Juris Canonici lib. 2. cap. de Cenſibus. Et p̄ t̄ Proxies, que reſemblont Tithes in aux̄ points, poent eſt̄ bñ compare a eux̄ in teſt point, viz. que ne ſerront ſubject al Extinguiſhment per unitie de poſſeſſion.

Ceſt Caſe dependoit pluſozs Termes ſur demurrer, que fuit joyne in tēps de Sir Edmund Pelham chiefe Baron, & adjudg' in temps de Sir Humphrey Winch. Et fuit argue per le Attoz-ney generall p̄ le Roy; & per Henrie Linch del middle Temple p̄ Sir Ambroſe Forth.

Mich'

Mich' 5 Jacobi, in Banke le Roy.

Le Caſe del Cuſtomes payable pur Merchandiſes.

INformation fuit exhibite en Banke le Roy per le Atturney general, vers le Maior, Viſcounts & Citizens de Waterford, en que il monſtre que le dit Maior, Viſcounts & Citizens, pur le ſpace de un an devant, ont receive, & convert a lour proper uſe, le Grand & Petit Cuſtomes, & le Subſidie de Pondage, de touts merchandiſes impoztes & expoztes in & de le Pozt de Waterford; & que ils ont auxy fait & ordeigne un Cuſtomer, ou Collector des Cuſtomes, un Controller des Cuſtomes, un Searcher, & un Gageor, deins le dit Pozt, al prejudice del Roy, & ſans aſcun Garrant: & ſur ceo il prie Proceſſe vers le dit Corporation, de faire eux bener & reſponder Quo warranto ils ont priſe les dits Cuſtomes & Subſidie a lour proper uſe, & ont create & ordaine les Officers avantdit.

A ceſt Inforzmation ils pledont un ſpeciall Plea, en que ils juſtifiont le receiving des dits Cuſtomes & Subſidie, & le ordeigning des dits Officers, per vertue de 4 ſeverall Charters.

1. Per le primer Charter, dat 8. Novembris, Anno Regis Johannis nono, le dit Roy grant al Citizens de Citie de Waterford (que adonques fuit lour noſme de Corporation) Cuſtumam vocat' le Murage de omnibus rebus venalibus & Mercimoniis infra dictam Civitatem emptis ſeu venditis,

its

ita bene & integre ſicut Burgenſes villæ ſuæ Briſtoll habebant, vel melius habere conſueverunt. Et ils averront in facto, que les Burgeſſes de Briſtoll, al temps del dit Graunt, avoent le dit cuſtome de Murage de touts choſes & Merchandiſes achates & vendues deins le dit Ville de Briſtoll.

2. Per le ſecond Charter, dat 6. Maii, 1 Henric. 5. le dit Roy graunt al Maior, Bailifes & Citizens del Citie de Waterford (per que noſme ils fueront donques incorporate) Cuſtumam ejuſdem Civitatis vocat' le Corquet, capiendam per manus dicti Majoris & Ballivorum imperpetuum abſque aliquo computo, &c.

3. Per le tierce Charter, dat 12. Maii, 3 Henric. 7. le dit Roy graunt al Maior, Bailifes & Citizens del Citie de Waterford, & ſucceſſoribus ſuis, quod ipſi & ſucceſſores ſui, & eorum quilibet, ac omnes & ſinguli cives & inhabitantes ejuſdem civitatis Waterford qui tunc erant, & qui pro tempore futuri eſſent, & eorum quilibet, pro bonis, catallis & merchandiſis ſuis quibuſcunque, infra Civitatem ſuam Waterford præd. ac portum, præcinctum & libertates ejuſdem, & in omnibus & ſingulis aliis portibus, creciis & locis infra terram ſuam Hiberniæ, de nova Cuſtuma, viz. de præſtatione ſive ſolutione duodecim denariorum de libra, Pondagio vulgariter nuncupato, erga dictum Dominum Regem, hæredes & ſucceſſores ſuos, imperpetuum ſint quieti & exonerati.

Et ut major concurſus tam hominum quam mercandiſarum ad eandem Civitatem, pene in extremæ deſolationis & paupertatis abyſſum deductam, de cætero confluat & accreſcat, ulterius dedit & conceſſit præd. Majori, Ballivis & Civibus, &c. Quod omnes & ſinguli mercatores & homines, tam indigenæ quam alienigenæ, & eorum quilibet, ad prædictam Civitatem ſuam Waterford, ac portum & præcinctum ejuſdem, cauſa mercandizandi venientes, pro catallis & mercandiſis ſuis quibuſcunque, infra Civitatem prædictam, & præcinctum & libertates ejuſdem, de dicta nova Cuſtuma, ſive Pondagio, erga dictum Dominum Regem, hæredes & ſucceſſores ſuos, ſimiliter ſint quieti & exonerati imperpetuum.

4. Per le 4. Charter, dat 8. Februar. 11 Elizabeth. la dit Roigne grant al dit Maior, Bailifes & Citizens, & ſucceſſoribus ſuis, quod imperpetuum annuatim de ſeipſis eligere valeant & poſſint

poſſint Scrutatorem, Gageatorem, & alios Officiarios & miniſtros quoſcunque, infra eandem Civitatem & libertates ejuſdem, uſuales & neceſſarios, ove averm̃t que le Cuſtomer & Controller de Cuſtomes fueront neceſſarie Officers deins le dit City, p̃ ceo que le Roy H. 5. per ſon Charter avantdit ad grant a eux le Cocquet Cuſtome. Et ils concludont lour plea, que per les dits Warrants ils ont receive les dits Cuſtomes & Subſidie de Pondage a lour proper uſe, & ont fait & ordaine les dits Officers deins lour Citie. Et ſur ceſt plea le Atturny d̃l Roy demurre en Ley.

Et en arguñt de ceſt demurrer 2 principal matts fueront conſider. 1. Quel manñ de duties Cuſtoms & Subſidies ſont, & lour originall & differente. 2. Le quel les dits Charters ſont ſufficient warrants al Corporation d̃ Waterford, a receiver les dits Cuſtomes & Subſidies a lour proper uſe, & de faire Cuſtomer, Controller, Searcher, &c.

QUaunt al Primer matter, pur le explanation de ceſt learning de Cuſtomes, fuit primerment obſerve, Que les Duties payable al Roy hors de merchandiſes exported ou imported ſont de 3 kinds; 1, Cuſtoms, 2. Subſidies, 3. Impoſts, ou Impoſitions. Queux fueront define & divide en ceſt manner.

1. CUſtomes ſont Duties certain & perpetuall, payable al Roy, come enheritance de ſon Corone, p̃ merchandiſes tranſports de travers le mer, del un Realme en auter. Car p̃ choſes vendible q̃ voy de merchandiſe caries de un port al auter port, deins meſme le Realme, per mer ou per terre, nul merchant eſt tenus de paier alcun Cuſtome.

Ceux duties appell Cuſtomes ſont divide en 3 kinds.

1. Magna & antiqua Cuſtuma.
2. Parva & nova Cuſtuma.
3. Priſage & Butlerage.

Et en touts ceux la Corone ad un certaine & perpetuall inheritance.

1. Le Grand & ancient Cuſtome eſt payable hors d̃ native ou homebred Commodities de 3 ſorts; viz. Wœll, Wœlfels, & Hides. Et eſt certainty, 6 s. 8 d. pur un Sack

do

de woll ; pur 300 Wolfels, 6 s. 8 d. & pur un Last de hides, 13 s. 4 d. Et est dettre note, q̄ chelcun Sack ō woll contain 26 Stone, & chelcū Stone 14 pound ; & q̄ le Last de hides est 20 Diker, & chelcun diker 10 hides.

Ceo est le ancient Custome payable per chelcū Denizen p̄ l' exportation des cōmodities avantdits: mes les Merchāts strangers payont un tierce part plus, p̄ remission de prizes, & auks privileges a eux grants per le Chark de 31 E. 1. Dier 1 Eliz. 165. b.

2. Le Novel & petit Custome est 3d. de le pound, paiable per Merchants strangers tantsoleūt, p̄ touts commodities per eux imported & exported, come est exprelle in le dit Chark de 31 E. 1.

3. Prisage est Custome prise de Wines ō touts sorts, & est en certeinty, 2 tunnes de Wine hors de chelcū Niel lade ove 20 tunne ou pluis, l' un tunne dettre prise devāt l' Mast del Niel, & l' auk darriere le Mast. Et p̄ ceo q̄ cest Custome est part del merchandise imported, & prise in specie, est appel Prisage.

Et cest Custome de Prisage suit payable en Engleterre per touts merchants, Denizens & Aliens, devant le dit Charū de 31 E. 1. per q̄ le Roy remise al Merchants strangers touts prizes: & en melme le Chark est exprelle, que en consideration de ceo, les Merchants strangers ont grant ō payer al Roy & les hēes, nomine custume, 2 s. de quolibet Dolio vini quod adducent vel adduci facient infra regnum, &c. q̄l custom ō 2 s. del tunne est ore en Engleterū appel Butlerage, & paiable la per touts Merchants strangers. Vid. Stat. de extreat. ad Scacc. 15 E. 2.

Et ceo est le nature de ceux leūall Duties queux sont proprement appel Customes.

Pur le Originall de ceux Customes.

1. Le dit Auncient & graund Custome est parcel ōl auncient inheritance de la Corone, & cy auncient que la Corone melme. Inheret sceptro, & est due de common droit & per prescription, & nemy per graunt ou benevolence des Merchants, ou per Act de Parliament. Dier 1 Eliz. 165. b. Et ceo primerment suit raise hors del native, proper & primer commodities del nostre Pais, viz, Woll, Wolfels, & Hides, queux accrewont per les avers depasturant la terre,

terre, ſauns induſtrie des inhabitants, & ſont revera les Naturall riches de Engleterre. Car invention & induſtrie des homes ont trove & produce Tinne, & Plumbe, & Draps, & Iron, en ſeveral Ages; mes les 3 primer commodities, viz. Wooll, Woolfels & Hides, fueront properment & antientment dit les Staple commodities del Realme, (coment que per le Statute de 27 E. 3. c. 1. Plumbe ſoit auxy declare deſtre un Staple commoditie; & pur ceo ceſtuy que oblige en Statute ſtaple conuſt que il eſt indebt pro lanis, coriis & plumbis, &c.) Et fueront appell Staple commodities, pur ceo que fueront deſtre port al Staple del Roy, deſtre exported la, & nemy ailors, p̄ le melior Collection des Cuſtomes due al Roy. Vide les Statutes de 27 E. 3. cap. 1. & 43 E. 3. c. 1. ou eſt expreſſe en queux Villes de Engleterre, Ireland & Gales les Staples del Roy fueront eſtabliſh, pur le exportation de ceux commodities. Et appiert auxy per divers Statutes, que Caleys fuit aſcun foits appoint pur un general Staple; uncore ceo fuit toll & ouſted arrere, & les antiēt Staples reeſtabliſh.

Mes pur ceux 3 primer commodities tantſolement, viz. Wooll, Woolfels & Hides, le dit antient & certaine Cuſtom̄ fuit due & payable. Car pur Plumbe, coment que fuit dit un Staple cōmoditie, le petit Cuſtome de 3 d. ſur le pound tantum fuit pay, come appiert per le Statute de 27 Ed. 3. cap. 1. & in libr. Rubro Scaccar. hic fol. 8. a.

Et que le Roy ad eſtate de enheritance en ceſt Graund & Antient Cuſtome, appiert pleinement 31 H. 8. Dier. 43. b. ou eſt dit, que Cuſtome eſt inheritance del Roy per courſe de Common Ley, & Subſidie eſt un Taxe aſſeſſe per Parliament. Vide auxy 1 Mar' Dier 92. ou le Roy E. 6. ad grant licence al un Merchant ſtranger de tranſporter touts Merchandiſes, payant pro Cuſtumis & Subſidiis tot & tantas denariorum ſummas quot & quantas aſcun Anglois merchant ou Denizen payeroit, & non ultra. Et fuit reſolve per touts les Juſtices, que apres le mort del E. 6. le grant fuit bone pur le Cuſtome, & voide pur le Subſidie: pur ceo que le Roy ad enheritance en le Cuſtome come Prerogative annex a ſon Corone; & en les Subſidies il ne avoit eſtate forſque pur ſon vie per Act de Parliament. Iſſint 9 H. 6. 12. a. la Roigne ad part de ſa Dower aſſigne ex magna Cuſtuma

de London: que eſt argument que le Roy ad greinder eſtate en le Graund Cuſtome que pur ſon vie demeſne. Et p̄ ceo, le opinion de Babington la, que le Roy nad enheritance en le Grand Cuſtome, mes en le Petit Cuſtome tantum, ne ad aſcun colour de reaſon. Iſſint per le Eſtatute de 18 Hen. 6. eſt prohibe, que les Gages des Juſtices ſerront perpetualm̄t pay hors des prim̄er deniers prohenants des Cuſtomes; que ne puiſſoit eſtre, ſi le Roy ne aboit eſtate de perpetuitie en les Cuſtomes. 1 H. 7. 4. a. Darrainement, eſt un rule infallible, que ſi home ad choſe de common droit & per preſcription, que il ad eſtate de fee-ſimple en meſme la choſe; car de particular eſtate le commencement poet & doet eſtre monſtre. 21 H. 7. 15. a.

Mes pur ceo que cheſcun choſe que eſt due de common droit & per preſcription doet aver reaſonable cauſe de Cōmencement, ſuit note & obſerve, que ceſt Cuſtome ſuit primerment pay al Corone pur 4 principall cauſes, ou reaſons.

1. Pur Conge de departer le Realm, & de carrier les cōmodities del Realm hors de ceo. Vide Dier 1 Eliz. 165. b. & le Eſtatute de 18 E. 3. cap. 3.

2. Pur le intereſt que le Roy ad en le Mer, & en les Paſſages de ceo. 22 Aſſiſ. pl. 93. 15 Eliz. Dier 326. b.

3. Pur ceo, que le Roy eſt Gardein de touts les Ports & Havens del Realme, q̄ux ſont Oſtia ſeu Januæ Regni, & le Roy eſt Cuſtos totius Regni.

4. Pur waftage, & protection des Merchants ſur le mer vers les enemies del Realme, & vers Pirats, q̄ux ſont cōmon enemies de touts Nations.

2. Le Petit & novel Cuſtome payable per Marchant ſtrāgers ſolement aboet commencement en temps Ed. 1. Car devant ceſt temps, les duties paiable per Merchant ſtrangers p̄ touts Forein cōmodities imported, (except Wines) & pur touts Native commodities exported, (except les dies Staple wares de Wooll, Woolfels & Hides) fuerōt uncertein. Car le Roy per ſon Prerogative priſot a ſō uſe, & a ſon price, tant & tiels portions de lour merchandiſes quant il ad beſoigne, per noſme de priſes, queux fueront touts foits uncertain.

Mes le Roy E. 1. per ſon Charter, dat' 1. Februarii ann' 31.

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de son Reigne, en favor des Merchants strangers, & d̄ traher lour commerce, remit a eux touts prises, & graunt a eux divers auters Priviledges. Et pro supradictis libertatibus obtinendis, & prisis remittendis, (ceux sont les parols del Charter) supradicti Mercatores universi & singuli pro se, & omnibus aliis de partibus suis, concorditer & unanimiter concesserunt, q̄ ils payeront al Roy & ses heires tres denarios de libra p̄ touts Merchandises imported ou exported per eux, come est expresse plus particularment en le dit Charter, que est destre trove en le office de chief Remembrancer en le Eschequer del Engleterre, & in libro Rubro Scaccarii hic. Et cest Charter del E. 1. en touts points fuit ratifie & confirme per Act de Parliament 27 E. 3. c. 26. Et ceo est le original del Petit Custome.

Mes est destre note, que cest Petit Custome p̄ Foreine commodities fuit accept per le Roy, quaunt forsque petit quantity de tiels foreine wares fuit import en Engleterre. Car en temps Edw. 1. & apres ceo en temps Edw. 3. les native commodities de Engleterre exported fueront de greinder quantitie & value per 2 parts de 3 al meines, que les Foreine merchandises imported; per que le Roy E. 3. rasoit cy grand revenue hors del native commodities de ses dominions: que est note de bone husbandrie en cest Roy. Car Oportet Patremfamilias vendacem esse, & non emacem, come Cato le seignior disoit. Mes ore est tout cōtrary: Car a cest tēps le Outgate est meind̄ que le Ingate; les foreine wares imported sont de greinder quantitie & value per 2 parts que nostre native commodities exported. Que est graund honte a nostre Nation, destre issint enamour ove les Mercery & Grocery wares imports per strangers, & d̄ expender sur eux plus que le value de touts les Staple & reall commodities de nostre Pais: que serra en fine le ruine del Commonweal.

3. Prisage de Wines est auxy Custom due per prescription, & parcel del antient enheritance de la Corone. Et que le Roy ad enheritance en le Prisage de wines, appiert per les Charters graunts al Citizens de London, & al ceux de les Cinque Ports, destre discharge de Prisage en touts Ports a touts jours. Vide Statut' 1 H. 8. cap. 5. Et le Countee de Ormond ad estate de enheritance en le Prisage de

wines en ceſt Realme per graunt del Roy. Et le Charter de London fuit allow en ceſt point en le Eſchequer de Engleterre, 44 Eliz. Mes le queſtion la fuit, ſi un Citizen de London que ne ad family, ne pay Scot & lot, mes ſojourne en le meaſon dun auter, avera le benefit del dit Charter. En le argument de quel Caſe, Coke, donques Attorney General, miſoit ceſt differente de Citizens; viz. que il y ad Citizen nomine, Citizen re, & Citizen re & nomine. Mes fuit reſolve que ſolement le Citizen re & nomine, viz. ceſtuy que eſt Fréman de London, & eſt auxy enhabitant, & pay Scot & lot la, ſerra frée de Priſage per le dit Charter. Pur le original de Butlerage que eſt pay per Merchant ſtrangers, ceo avoit commencement per le Charter de 31 E. 1. come eſt avantdit, & eſt limit deſtre pay al Roy & ſes heirs en perpetuity.

Et ceo eſt le Nature, Original, & Differences de les auntient Duties payable pur merchandiſes, queux ſon properment appell Cuſtomes, & ſont le enheritance de la Corone.

2. Subſidies auxy ſon Duties paiable pur merchandiſes exported & imported, mes ſont grant per Act de Parliament. Dier 31 H. 8. 43. b. 1 Mar. Dier 92. a. Et ſont de 3 divers ſorts, accordant al diverſity des commodities: & ſont appell,

1. Aydes ou Subſidies, eſteant grant hors des dits native commodities, viz. Wooll, Woollels & Hides, ultra & præter le ancient Cuſtome avantdit.
2. Tunnage, grant hors de Wines de touts ſorts, ultra & præter le Priſage, & le dit Cuſtome de 2 s. de Dolio grant per le Charter de 31 E. 1. ore appell Butlerage.
3. Pondage, grant hors de touts commodities imported & exported, except Wines & les Staple commodities avantdit, & payable per Merchant ſtrangers, ultra & præter le Petit Cuſtome.

Pur le Original de ceux Duties.

1. Aydes & Subſidies, paiable hors des dits native & ſtaple commodities exported, ne fueront ſouventfoits graunt per Parliament devant le temps del E. 3. Mes a ceſt Roy, pur maintenance de ſes Guerres en France, per Parliament

ment 14 E. 3. (que ſuit le primer an de ſon reign de France) un Aid ou Subſidy fuit graunt de 40 s. hors de cheſcun Sacke de wool, 40 s. de 300 Woolfels, & 4 l. hors de cheſcun Laſt de hides; & ceo de continuer pur un an tantum: & que apres les Merchants paieront forſque le auncient Cuſtome.

Apres ceo per Parliament 13 E. 3. un Subſidy fuit grant al dit Roy de 50 s. ſur cheſcun Sacke de wool, 50 s. ſur cheſcun 300 Woolfels, & 5 l. ſur cheſcun Laſt de hides.

Per Act de Parliament 31 H. 6. un Subſidy fuit grant al dit Roy de 43 s. 4 d. hors de cheſcun Sacke de wool, & 43 s. 4 d. de cheſcun 240 Woolfels: mes apres en meſme le Parliament ceſt Subſidy fuit abate, & reduce al 33 s. 4 d. pur Sacke de wool, & 33 s. 4 d. pur 240 Woolfels, & le payment limit pur 5 ans tantum. Iſſint que ceux Aids ou Subſidies ne fueront del un certain quantity ou continuance, juſques al temps del E. 6. a quel Roy, en le primer Parliament de ſon reigne, fuit grant un Subſidy de 33 s. 4 d. de cheſcun Sacke de wool, 33 s. 4 d. pur cheſcun 240 Woolfels, & 3 l. 6 s. 8 d. de cheſcun Laſt de hides exported per Denizens: pur cheſcun Sacke de wool exported per Aliens, 3 l. 6 s. 4 d. & pur cheſcun 240 Woolfels, 3 l. 6 s. 8 d. & pur cheſcun Laſt de hides, 3 l. 13 s. 4 d. Et ceſt Subſidy grant de continuer durant le vie natural del Roy. Et puis le mort de ceſt Roy, meſme le Subſidy ad eſtre grant al M. Marie, M. Elizabeth, & al noſtre Seignior le Roy que ore eſt, durant lour ſeveral vies, per ſeveral Acts de Parliament.

2. Tunnage, que eſt Subſidy hors de Wines de touts ſorts, fuit primerment graunt per Parliament 5 R. 2. ou 2 s. de cheſcun Tunne de wine deſtre imported en Engleterre fuit grant al Roy pur 2 ans; & ceo fuit pur maintenance de un flæte ſur le mer, a ſuppreſſer les Pirates. Mes apres, per Parliament 3 Ed. 4. Tunnage fuit graunt al ceſt Roy pur terme de ſon vie naturall en ceſt manner, viz. 3 s. pur cheſcun Tunne de wines, & (ouſter ceux 3 s.) pur cheſcun Tunne de ſwæt wines 3 s. pluis. Vide Statut. 12 E. 4. cap. 3. Et ceſt Subſidy fuit apres grant al H. 8. & E. 6. ove ceſt addition en temps E 6. que de cheſcun Awme de Rheniſh wine aury 12 d. ſerra pay. Et puis le temps del E. 6. ceſt Subſidy de Tunnage

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ad eſtre grant en Engleterre per ſeverall Acts de Parliamt al M. Mary, M. Elizab. & al noſtre Seignior le Roy que oꝛe eſt, durant lour ſeverall naturall vies.

3. Pondage, que eſt Subſidie graunt hoꝛs de touts commodities expoꝛted & impoꝛted, except wines et les auntient Staple wares, ut ſupra, & paiable per touts merchants Denizens & Aliens, eſt viceſima pars del value des merchandiſes, viz. 12. d. de le pound; & fuit pꝛimerment graunt per Parliament en Engleterre 31 H. 6. durant le vie de ceſt Roy: quel graunt fuit immediatement reſume. Mes aꝑs ceo, viz. 3 E. 4. ceſt Subſidie de Pondage fuit graunt al dit Roy durant ſon vie: vide Stat. 12 E. 4. cap. 3. Et puis meſm̃ le Subſidie fuit graunt al Hen. 8. durant ſon vie. Et meſme le grant ad eſtre renew al E. 6. M. Marie, M. Elizabeth, & al noſtre Seignior le Roy que oꝛe eſt, durant lour ſeverall vies, per ſeveral Acts de Parliament en Engleterre.

Mes icy en ceſt Realm de Ireland le Subſidie de Põdage ad commencement en ceſt manner. Anno 14 Ed. 4. un Fraternitie des Arms fuit erect p Act de Parliament, cõſiſtant de 13 plus honoꝛable & loialment diſpoſed perſons en les Counties de Dublin, Kildare, Meth & Louth: Et un certaine number des homes a chival ove lour pages, & des archers a chival, fuit aſſigne a eux, ove certaine entertainement & gages paiable al cheſcun des dits homes a chival & archers. Queux Freres des Armes, ove lour dit retinue, ſerront touts temps pꝛiſt a defender le Engliſh Pale encounꝛ Rebells & Outlawes. Et p̃ le paiment des gages des dits archers & homes a chival, fuit enact, que les dits Freres des Arms & lour ſucceſſoꝛs averont 12 d. de le pound de touts merchandiſes impoꝛted & expoꝛted hoꝛs de ceſt terre de Ireland, Hides & Wines & les merchandiſes del Frẽmen de Dublin & Drogheda ſolement except.

Apꝛes 10 H. 7. en le Parliament tenus per Sir Edw. Poynings fuit enact, que p̃ tant que le dit 12 d. de le pound grant al dit Fraternity (que eſt la appel le Fraternity de S. George) fuit expend & conbert al pꝛivat uſes, & nemy en diſcharge de publicke ſervice, pur ceo le Roy averoit le dit Pondage pur 5 ans enſuant, & que touts auters grants fait del dit Pondage ſoent repeale & adjudge void, &c.

Les dits 5 ans eſteant expire, viz. Ann' 15 Hen. 7. nobel

Pon-

Pondage fuit grant per Act de Parliament al dit Roy, ſes heires & ſucceſſors in perpetuity; ove un Proviſo, que ceſt Act ne ſerroit prejudiciall al Freemen de Dublin, Waterford & Drogheda, eſteãt free p Birth, Marriage, ou Prentiſhood, &c. Et iſſint le Roy ad eſtate de Enheritance en ceſt Subſidy de Pondage en Ireland, ou il nad ceo ſolque durant ſon natural vie en Engleterre.

3. IMpoſts ou Impoſitions ſõt l' tierce kind de Duties payable pur merchandiſes: & ſont alcun foits rate & aſſeſſe per Parliament, & donques ſont en nature de Subſidies; & alcun foits ſont impoſe per Prerogative Royall, pur ſuppoꝛter les neceſſary charges de la Coꝛone, & donques, Nihil magis juſtum eſt quam quod neceſſarium eſt, come un auncient Senatoꝛ de Rome diſoit.

Le Impoſt ſur Wines in ceſt Realme fuit primerñt aſſeſſe per Parliament, & limit deſtre pay pur certaine terme õ ans, quel eſteant expire, ceo eſt oꝛe continue per Prerogative del Roy.

CEux ſont les Duties payable al Roy de Engleterre p l' expoꝛtation & impoꝛtation de merchandiſes. Et coment que ceſt Revenue del coꝛone ad eſtre grandment impꝛobe en ceſt darreine age; uncoꝛe ſi les Cuſtomes, Subſidies & Impoſitions õ Engleterre ſont compare al Duties & payments de ceſt kind en foꝛein Countries, ſerront trobe deſtre moderate & foꝛt reaſonable.

Les auncient Romaines (car ceſt Revenue paiable boꝛs õ merchandiſes eſt le pluis ancient, honoꝛable & reaſonable que appertient al alcun Prince ou State) aboent ceux Duties per noſme õ Vectigalia, à mercibus evectis & invectis; ũx l' Emperour Juſtinian appel Exagogica & Iſagogica. Et touchant la nature õ eux, les rules de noſtre Ley ſont agreeable al ceux õ la Imperiall Ley.

1. Nous diomus, que Cuſtome eſt l'ancient enheritance de la Coꝛone Dengleterre: ils diont, Vectigal origine ipſa jus Cæſarum, & Regum patrimoniale eſt. 2. En noſtre Ley, Waſtage & Protection des Merchants ſur le mer eſt un des principall cauſes de paiment des ceux Duties: & en la Ley del Empire, Primaria Vectigalium cauſa ac ratio fuit,

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ut plana tutaque mercatori prætereunti itinera præſtarentur. Et Plin. lib. 19. c. 4. dit, Merces pretioſæ ut ex India, Arabia, Æthiopia, tuto à mercatoribus in Europam conveherentur, neceſſario claſſem parandam eſſe adverſus Piraticas incurſiones. Inde maritimi exercitus alendi cauſa, Vectigal Rubri maris inſtitutum.

Et ceſt Vectigal octava rerum pars erat, & pur ceo fuit un ſort des Publicanes queux fueront appell Octonarii: mes les Merchants queux avoent le prividledge de Citizens de Rome paieront forſque viceſimam partem, ou Pondage; & les Publicans ou Colleators de ceſt Cuſtome fueront appell Viceſimarii.

Et ceo fuit le auncient Cuſtome payable per Merchants deins le eſtate del Empire. Et en Britanie, devant que ceſt Iland fuit fait Province ſubject al Empire, eſt credible que les Merchants payeront greinder Rates pur Exportation des commodities, que ils payont ore. Car Strabo dit, Britanni Vectigalia tollebant gravia earum rerum quas in Galliam, tametſi brevi maris trajectu, importabant.

Mes a ceſt jour eſt certaine, que en auters Realmes de Europe les Cuſtomes ſont plus haut & heavy que noſtres.

En Spaine le Roy prift octavam partem de ſes proper ſubjects: mes ô Merchants ſtrangers il prift alcũ foits le cinque part, alcun foits le quart pt del value de lour merchandiſes.

En France les Cuſtomes payable per Strangers amountaunt al huit de Cent. Bodin. de Republ. libr. 6. ca. 2. Mes les Impoſitions & Gabels q̃ le Roy la prift de ſes ſubjects p̃ Sel, Wine & Blees, & touts choſes vendible, ſont extraordinarie & fort exceſſive. Iſſint poet eſtr̃ dit del Grand Duke de Tuſcany, & auters States de Italy.

Le Grand Seignior ô Turkie prift le tenth pt de Merchãt ſtrangers, & le vint pt ou Pondage de ſes ſubjects.

QUant a les Officers queux ont a fair ove les Cuſtomes:

1. Le Cuſtomer fuit le pluis auncient, & al primes le ſole Officer que fuit le Colleator des Cuſtomes, & accomptable p̃ eux al Roy. 9 H. 6. 12. b. 1 H. 7. 4. b.

2. Apres

2. Apres, en aid de Cuſtomer, p̄ trover les concealements & ſubſtractions des Cuſtomes & Subſidies, & pur ſeiſer merchandiſes forfeited, le Searcher fuit ordaine.

3. Donques, pur ceo que le Cuſtomer fuit accomptant al Roy, mes ne puiſſoit eſtre charge forſq̄ pur ſon proper livre ō Cotquets, ou ſon Oath, Controller fuit aſſigne a luy.

4. Darrainm̄t, pur diſcover & prevent les frauds de touts ceux, un office de Superviſor ad eſtre erect.

CEux diverſities touchant la nature de les ſeveral Duties payable pur merchandiſes eſteant declare & agrē, le Second matter fuit conſider, viz. Si les points de les ſeveral Charters plead, come avant eſt monſtre, per le Corporation de Waterford, ſoent ſufficient warrants a eux, de receiver a lour proper uſe les dits Cuſtomes & Subſidies, & de faire les dits Officers ō Cuſtomer, Searcher & Controller des Cuſtomes.

1. QUant al primer Charter de le Roy John, per que il grant al dit Corporation Cuſtumam vocatam le Murage de omnibus rebus venalibus infra dictam Civitatem emptis ſeu venditis, adeo bene & integre ſicut Burgenſes villæ de Briſtoll habebant, &c. fuit reſolve, que per ceux parolx nul Cuſtome ou Subſidie eſt graunt a eux, pur divers reaſons.

1. Pur ceo que Murage neſt rien que Toll paiable pur reparation des Mures, horſ de choſes vend en Market obert per retaile, N. N. Br. 228. d. ou Cuſtome eſt pay pur merchandiſes imported ou exported a travers le mere; & vend en groſſe. Et eſt auxy ceſt difference, que tiel Toll covient eſtre pay touts foits per ceſtuy que achate le choſe, & Cuſtome per Merchant que vend le choſe, N. N. Br. 228. e. Et que Murage neſt forſque Toll appiert per le Regiſter, 159. a. en brief de Eſſendo quiet. de Theoloneo, & per le dit Charter 31 E. 1. per que touts merchants ſtrangers ſont acquit de Murage, Pannage & Pontage, & uncore ils paiont le grand & petit Cuſtome. Vide auxy Jehu Webbes Caſe en le 8. part des Reports de le Seignior Coke 47. a.

2. Murage ne giſt en grant, mes en preſcription: car ſicome aſcun choſes ne giſont en preſcription, mes en grant,

come Conuſans de pleas, Catalla Felon. &c. 1 Henr. 7. 22. b. 9 Henr. 7. 20. a. iſſint ſont auters choſes que ne giſont en grant, mes en preſcription, come ô aver frée Garren en auter terre, ou de prender Murage, Pontage, ou Picage, 13 Henr. 4. 14. b.

3. Le Reference al Vill de Briſtoll eſt uncertain & void, pur ceo que neſt tiel Ville ou Burgh appell Briſtoll en ceſt Realme de Ireland, & le Ville de Briſtoll entend en le Charter eſteaunt en Engleterre, le averrment que les Burgeſſes de Briſtoll avoent Murage al temps de ceſt Graunt, ne poet eſtre try icy. Auxy ils doent averre en lour plea, que les Burgeſſes ô Briſtoll avoent tiel certain Toll ou Cuſtome ô cheſcun choſe vende & achate deins le Vill, & que ils avoent ceo per graunt del Roy; car donques le Reference fuiſſoit al certeinty. Come eſt tenus 20 Ed. 3. Fitz. Avowrie 120. En Quo warranto port en Eyre vers Bailiffs & Comminalty ô Lancaſter, ils pledont un Charter ôl Roy John, que graunt a eux touts Franchiſes que le Burgh de Northampton ad; & pur ceo que nul Franchiſe fuit la expreſſe, ou monſtre de Record, ſeiſure fuit agard des Franchiſes.

2. QUant al 2. Charter, per que H. 5. grant al Maior, Bailiſes & Citizens de Waterford Cuſtumam dictæ Civitatis vocatam le Cocquett, capiendam per manus dicti Maioris & Ballivorum in perpetuum: Coment que fuit object per le Atturney Generall, que le Cocquett neſt forſque Acquittance ou Bill teſtifiant que le Cuſtome eſt pay, que fuit al primes appell Cocquett, pur ceo que per tiel Bill le Merchant eſt de Cuſtuma quietus; per quel parol le auncient Cuſtome, eſteant un ſpecial enheritance de la Corone, ne poet paſſer: & coment que fuit auxy object que Cuſtome eſt paiable per cheſcun ſeverall merchant, Denizen & Alien, & pur ceo ne poet eſtre dit Cuſtuma dictæ Civitatis: & nient obſtant que ſoit limitt deſtre vyſe per maines del Maior & Bailifes: uncore le Officer ôl Roy, viz. le Cuſtomer, eſt charge ove ceo, & ils doent aver allowance per Petition, come eſt rule 1 H. 7. 4. a. ou R. 3. ad graunt Licence al certain merchants a tranſporter laines, &c. & de ceo de retainer lour Cuſtomes; en ceſt caſe, nient obſtant le dit grant,

les

les Cuſtomers ſueront charge & accomptable pur les Cuſtomes.

Uncore fuit reſolve, que le antient Cuſtome de Wools, Wolfels & Hides, fuit bien grant al dit Corporation per les parolx de Cuſtome vocat' le Cocquett. Car ceſt antient Cuſtome eſt communement appell & conus per noſme de le Cocquet Cuſtome, en touts Ports de Engletre & Ireland: Et Cuſtuma dictæ Civitatis ſerra entend cuſtome payable pur merchandiſes in dicta Civitate. Car favorable interpretation ſerra fait de tiels graunts ſolonque le uſage & allowance. 10 H.7.14. a. Et pur ceo que le Cuſtome eſt graunt al eux, ils poent ceo colleter per lour proper Officer, & le Officer del Roy neſt accomptable pur ceo, come en le dit Cale de licence de retainer, 1 H.7.

3. QUant al 3. Charter, dat. 12 Maii 3 H. 7. per que le dit Roy grant al Corporation de Waterſord, quod omnes & ſinguli cives & inhabitantes dictæ Civitatis, & omnes & ſinguli mercatores, tam indigenæ quam alienigenæ, de nova Cuſtuma vocat' le Pondage, viz. de præſtatione 12 denariorum de libra, imperpetuum ſint quieti & exonerati, &c. fuit reſolve, que ceſt Charter ne fuit ſufficient Warrant al eux, de receiver a lour proper uſe le Pondage de touts merchants, Denizens & Aliens, deins le Port de Waterſord. Et ceo pur 2 principall reaſons.

1. Pur ceo que ceſt Graunt tend al diſcharge de cheſcun particular Merchant, & ne dona le Pondage al Corporation. 4 H. 6. b. Le Roy E. 4. grant al Maior & Burgeſſes de Oxford, que ils ne ſerront Jures ove forreiners, ne forreiners ove ceux, &c. Per totam Curiam les Burgeſſes que ſont impannell, quant ils ſont demand deſtre Jures, poent mõſtrer le Charter, & pleader ceo; mes nemy le Maior & Corporation. A meſme lentent eſt 21 Ed. 4. 55. & 56. le Cale de Norwich. Et p̃ ceo fuit dit, que ſi le Roy grant al Abbe que touts ſes poſſeſſions ſerront diſcharge de Diſmes grant en Parliament, (come le Retour de Edingtons Cale eſt 19 Hen. 6. 63. a.) le Abbe en ceſt cale ne poet colleter les Diſmes de ſes Tenants, & retainer a ſon proper uſe. Iſſint ou le Roy ad graunt al Corporation de London, que les Citizens de London ſerront diſcharge de Priſage, le Corpo-

ration per force de cest Graunt ne prist le Prisage de les Citizens: mes chescun pticular home avera le benefit de le Charter, sil voet demander ceo, auterment nient.

2. Cest Graunt fuit fait Anno 3 Henr. 7. a quel temps le Pondage que fuit graunt per Parliament Anno 14 Edw. 4. al Fraternity de Saint George, come devant est monstre, fuit in esse. Mes apres, Anno 10 Henric. 7. cest grant al Fraternity de Saint George fuit repeale per auter Act de Parliament, & novel Subsidy de Pondage graunt al Roy p̄ 5 ans. Apres quel temps, viz. 15 H. 7. un auter Subsidy de Pondage fuit graunt al Corone en perpetuity, que est le Pondage ore en question: issint que le novel Pondage, que fuit graunt per Parliament 15 Henr. 7. ne puissoit estre graunt ou discharge per Charter fait 12 ans devaunt, viz. 3 Henric. 7. Car quaunt al Graunt en tiel case, est tenus 22 Edw. 4. Fitz. Graunts 29. en le Abbe de Walthams Case, que le Roy ne poet grant ascun parcel des Dismes del Clergie devant que soit graunt per le Convocation. Et quant al exoneration ou discharge en tiel case, cest point en le Case de Rector de Edington 19 Henr. 6. 63. a. nest rule, ne resolve. Mes admitt que le Rector en cest case la serroit discharge de Dismes per graunt le Roy fait devant le Parliament, uncore ceo ne serroit rule d̄ cest case: pur ceo que en le Graunt fait al Rector sont parolx de future temps, viz. que quant ascun taxe, tallage ou tenth serroit graunt per Parliament, que il, ses terres & chateux serront discharge; mes cest Charter de 3 Henric. 7. parle de Nova Custuma de Pondage donques in esse. Car ceo que est novel, est novelment past, & nemy future. Et pur ceo cest Charter ne va en discharge de auter Pondage, que serroit graunt apres per Act de Parliament. A cest entent vide 34 Henr. 8. Dier 52. a. ou est tenus, que le Roy ne poet discharge penalty del Act de Parliament que est destre fait en apres. Come ou Roy grant Licence al un de transporter Bell mettal, nient obstant ascun Statutes fait ou destre fait al contrary; apres Act est fait, que prohibit le exportation de Bell mettall sur certaine paine, le Licence graunt devaunt ne dischargera cest penaltie. Mes la est dit, que le Roy poet dispenser ove future chose en que il ad enheritance. Mes al temps de cest Charter graunt, viz. 3 Henr. 7. le Roy ne avoit enheritance

heritance en le Subſidie de Pondage. Car le Pondage donques in eſſe fuit grant al dit Fraternity de Saint George; quel graunt eſteant repeal, come eſt avantdit, novel Pondage fuit graunt al Roy pur 5 ans, Anno 10 Henr. 7. & apres, Anno 15 Henr. 7. le Pondage ore en queſtion fuit grant al Roy & ſes heires per Act de Parliament. Mes ſi le Roy ad eu enheritance en ceſt Pondage al temps de ceſt Charter grant al Waterford, viz. 3 Henr. 7. le diſcharge, ſans queſtion, ad eſtre bone. Come le Roy poet grant que le heir de ſon tenant ne ſerra en Gard, ou que ſon tenant ne ſerra puny en Ceſſavit. Car coment que ceux ſont future & caſual choſes, uncore le Roy ad enheritance en le Seigniory al temps. 36 Henr. 6. 48.

Auxy en pluſors cales, coment que Graunt del Roy extend al future temps, uncore ſerra entend des choſes preſent & in eſſe al temps del Graunt. Come in 38 Hen. 6. 10. a. Si le Roy graunt a moy liberties en touts mes terres, jeo avera les liberties en les terres queux jeo avoy al temps del Grant, & nemy en les terres queux jeo purchale apres. Iſſint ſi le Roy grant liberties en touts mes Demeſnes, & apres Tenancy eſcheat, jeo navera les liberties en le terre novelment eſcheated. Iſſint ſi le Roy graunt Catalla felonum quorumcunque, & apres per Parliament un act eſt fait Felony que ne fuit Felony devant, le Grauntée navera les biens de perſon attainted de tiel Felony. Iſſint ou le Evesque de Durham ad Jura regalia & eſcheates de Treaſon deins ſon County Palatine, il navera les terres de Tenant en taile attaint de Treaſon, queux ſont forfeit per le Statute de 26 Henr. 8. come eſt reſolve 12 El. Dier 289.

Et p ceo fuit reſolve, que ceſt Charter que exonerate les Merchants de Waterford de Pondage in Anno 3 Henr. 7. ne poet eſtre extend p acquitter eux de novel Pondage que fuit grant per Parliament Anno 15 Henr. 7. mes que touts Merchants, Denizens & Aliens, payeront Pondage en ceſt Port, forſque ceux que ſont exempt per le Proviſo del dit Act de 15 Henr. 7.

4. QUant al 4. Charter, conternant les Officers des Cuſtomes, fuit reſolve, que ou les Cuſtomes & Subſidies remainont

remainont en la Corone, & ne sont bien graunt al dit Corporation, le Roy mesme appointera les Officers pur le collection & due answering de ceux Duties, nient obstant cest Charter, que enable eux de creater tiels Officers. Mes en case ou Custome ou Subsidie est bien grant al Corporation, adonques le constitution de tiels Officers appertient a eux, & lour Officers poent entermeddler ove taunt que est bien graunt a eux, & nient pluis: mes ou lour Charter ba en discharge & exoneration tantum, ils ne poent appointer tiels Officers, car ne sont necessarie en tiel case.

CEst Case dependoit pluspors Termes en Bank le Roy icy, ou les points avantdit fueront resolve: mes devant ascun Judgement done en ceo, le dit Citie de Waterford, & les auters Maritimes Cities & Port-towns de cest Realme, per speciall direction del Roy, transmittoent en Engleterre certain Agents, ove lour several Charters, al entent, que touts questions queux ont estre move touchant les Customes & Subsidies payable al Roy pur Merchandises en les several Ports de Ireland, sur view des dits Charters per les Judges en Engleterre, poent estre resolve & determin, sans auter suit perenter le Roy & les dits Corporations.

Et sur ceo, Termino Michaelis 6 Jacobi, speciall Letters del Seignior de Privy Counsell fueront direct al Sir Laurence Tanfeild, chief Baron, Baron Heron, Sir Jo. Doddridge, un des Serjeants del Roy, & Sir Henry Hobart, Atturney generall del Roy en Engleterre; & auxi al Sir James Ley, donques chief Justice de Ireland, Sir Anthony Seintleger, Master del Rolls, & l'Atturney generall del Roy en cest Realme icy: (queux Servitors de Ireland adonques fueront present en Engleterre, & attendant al Court pur dispatch des auters services.) Per queux Letters le dit chief Baron & les auters fueront require, d'appeller devant eux les dits Agents; & sur perusall & consideration eu de lour several Charters, de certifie lour opinions & resolutions, en queux des dits Cities & Port-towns les Customes & Subsidies payable pur Merchandises doent estre respond & pay al Roy, & en queux les merchants, Denizens ou Aliens, doent estre discharge

charge de paiment de ceux Duties, & pur quant, &c.

Et accordant a ceſt direction, les dits Agents fueront appoint de attender les dits Referrées, ove lour Charters, & ove lour learned Counſell, al Serjeants Inne en Chancery Lane, al pluſors jours en le dit Michaelmas Terme: & la devant le Seignior chief Baron & les auters, les queſtions & points avantdit, ſurdant ſur les ſeverall Charters de Waterford, fueront move, & debate, & reſolve, ut ſupra. Et divers auters Charters fueront produte; mes nul point de difficulty fuit move ſur alcun de eux. Tantſolement Bolton, Recorder de Dublin, inſiſtoit forſment ſur un ancient Charter del Henr. 2. per que le dit Roy ad grant Burgenſibus de Dublin, Quod ſint quieti de Theoloneo, Paſſagio, Pontagio, & omni Conſuetudine, per totam terram noſtram Angliæ, Normanniæ, Walliæ, & Hiberniæ, ubicunque venerint ipſi & eorum res, &c. Et il affirmoit, que les parols de Theoloneum & Conſuetudo fueront apt parols d acquitter les Citizens d Dublin de le Graund & Auncient Cuſtome. Et pur le ſignification de le paroll Theoloneum, il cite le Text en Saint Matth. Golpell, Cum autem prætergrederetur Jeſus, vidit quendam ſedentem ad Theoloneum, &c. que eſt interpret deſtre al receit del Cuſtome. Mes a ceo fuit dit, que pur trover le ſignification de Theoloneum en ceſt caſe, ne beſoigne de reſorter al interpreters del Golpel, mes al interpreters del noſtre Ley. Et que en noſtre Ley le proper terme ou Parol de Art que ſignifie tiel Royall Duty que eſt payable pur Merchandiſes croſſant le mer, eſt Cuſtuma, & nemy Theoloneum: quel parol Theoloneum, en noſtre Ley, ſignifie rien forſque un Toll, & Toll (que eſt derive del Theoloneum) neſt forſque un petty Dutie payable en Markets & Faires per ceſty que achate le chole, ou Cuſtome eſt payable per Merchant que eſt vendor. N. N. Br. 126. b. Et per le Regiſter, 260. a. un difference perenter Toll & Cuſtome payable pur Merchandiſes appiert. Car en le Briefe d acquitter les biens del Eccleſiaſtical perſon d Theoloneo, Pannagio, Muragio, &c. ceſt clauſe eſt miſe, Dum tamen merchandiſas aliquas non exerceat de eiſdem: iſſint le difference eſt apparant. Et pur ceo il fuit over-rule pur ceſt parol Theoloneum.

Quant al auter parol, Conſuetudo, il dit que ceo fuit

nomen

nomen æquivocum, & ad 3 ſignifications. 1. Uſage de temps dont memory ne court eſt appel Conſuetudo. 2. Antient rents & ſervices ſont appel Conſuetudines. 3. Auxy les Cuſtomes payable pur merchandiſes ſont appel Conſuetudines. Et ceo appiert in Magna Charta, ca. 30. Omnes mercatores, niſi publice antea prohibiti fuerint, habeant ſalvum & ſecurum conductum, exire de Anglia & venire in Angliam, & morari & ire per Angliam, tam per terram quam per aquam, ad emendum & vendendum, ſine omnibus malis Tolnetis, per rectas & antiquas conſuetudines. Per quel parol Conſuetudines, il dit que les antient Cuſtomes payable pur exportation de merchandiſes ſont ſignifie. En meſme le ſenſe (dit il) ceſt parol eſt uſe en Bract. lib. 2. ca. 24. Si cui concedatur talis libertas, quod quietus ſit de Theoloneo & Conſuetudinibus dandis per totum regnum Angliæ in terra & mari, & quod Tolnetum & Conſuetudines capiat infra libertatem ſuam de vendentibus & ementibus, ſtatim erit quaſi in poſſeſſione, & poſſeſſionem retinebit, cum Tolnetum & conſuetudines receperit.

Il monſtre auxy les copies de certain accompts contain en les antient Pipe-Rolls en Engleterre, viz. un de 15 Henr. 2. en ceux parolx, Gervaſius Draper Vicecomes Northfolk & Suffolk reddit compotum de 45 l. 16 s. 6 d. de conſuetudine navium de Oreford: & in magno Rotulo 5 R. 1. ceſt entry eſt trove, Albericus de Billingeſgate debet 72 s. 4 d. de conſuetudine de Billingeſgate & Buttolpheſgate. Sur que il conclude, que en antient temps, quant Henric. 2. feſoit ceſt Graunt, le parol Conſuetudo ſignifoit la dutie del Cuſtome payable pur merchandiſes. Uncore il agree, que a ceſt jour tiel ſpecial duties de Prerogative come Cuſtomes ſont, ne poent paſſer per tiel generall parolt de Conſuetudines. Mes auncient Graunts ont touts foits un favorable interpretation, ſolonque le uſage & allowance. Et ſur ceſt ground il miſe pluſors livres, 14 H. 6. 12. a. del grant fait per Hen. 2. 34 Aſſ. p. 14. del grant de Wil. le Conqueror, 37 Aſſ. p. 6. 40 Aſſ. p. 21. 5 Ed. 4. 121. 10 H. 7. 13. b.

Mes fuit reſolve per le Seignior chief Baron & les auters Referrées, que le dit Graunt, que ils ſerront quieti de omni Conſuetudine, ne diſcharge eux de le Graund Cuſtome. Et principalment pur meſme le reaſon que ad eſtre uſe del auter part, viz. pur ceo, que Conſuetudo eſt nomen æquivocum,

æquivocum, & ſignifie pluſors kinds de Cuſtomes. Et iſſint eſteant generall paroll, ne unques paſſera ceſt ſpecial roial Duty. Come ou le Roy grant omnes piſcarias & piſcationes, roial Fiſhings ne paſſont: Roy grant touts Mines, roiall Mines de or & argent ne paſſont: Roy grant touts Amercements, roial Amercements ne paſſont. 3 Ed. 3. Fitz. 445. preſentment fuit fait vers Abbe, que il ad ſuffer un pont deſchuer, que il & les predeceſſors ſeigniors del ville ont uſe de repairer de temps dont memory ne court, &c. Le Abbe plead Charter del H. 3. deſtre quit de reparation de touts ponts, mures & cauſeyes; & que ceſt Charter ad eſtre allow en Quo warranto, &c. Uncore ceſt plea ne fuit allow. Car ceo fuit ſpeciall charge ou duty per reaſon de ſon ſeigniory, que neſt diſcharge per ceſt general clauſe. Car ou ſont paroſ en grant le Roy, que deſouth un generall noſme comprehend choſes roiall & choſes baſe, ſerra prile en favour del Roy, & les baſe choſes paſſeront, & les roiall demurreront en la Corone. Plowd. Com. 333.

Et le ſeigniors chiefe Baron miſoit un notable caſe a ceſt purpoſe, adjudge en Leſchequer de Engleterre, que fuit tiel. Le Roy ad grant al un Venetian merchant, que il ſerroit quit de omnibus Cuſtumis, Subſidiis & Impoſitionibus, & omnibus alīs denariorum ſummis debitis & ſolubilibus pro quibuſcunque merchandiſis importandis, &c. & que il ſerroit cy frē come les citizens de London. Per colour de ceſt Charter il claime deſtre frē de Priſage, pur ceo que per ſpeciall Charter les citizens de London ſont frē de Priſage. Uncore fuit adjudge que ceſt Grant del Roy ne diſcharge luy de Priſage, pur ceo que Priſage neſt ſpecialmt expreſſe en meſme le Grant. Et ſur meſme le reaſon fuit ore reſolve per le dit chiefe Baron & les auters Referrēs, ſur le Charter de Drogheda, per que les Burgeſſes de ceſt ville ſont diſcharge de Theoloneo, Paſſagio, Pannagio, Laſtagio, &c. que per force de ceſt parol Laſtagio ils ne ſerront diſcharge de Graund Cuſtome de 13 s. 4 d. payable pur cheſcun Laſt de Hides, pur ceo que il y ad un Laſt de Herrings, & Laſt de Powder, & de pluſors auters choſes, cybien que de Hydes.

Et a darraignmt fuit reſolve per le dit chiefe Baron & les auters, que un ſubject ne poet preſcriber deſtre frē &

discharge de le auncient Custome payable pur merchandises, ou de receiver ceo a son use demesne, pur ceo que ceo est un certaine revenue del Crowne: mes en auters choses que sont casuall, come Waif, Stray, Wreck, un subject poet prescriber.

Et apres ceo, viz. 16. Decembris 6 Jacobi, le dit chiefe Baron & les auters Referrées returnont al Seigniors del Privy Councell en Engleterre un Certificate de lour opinion & resolution, ou & en quel maner les dits auncient Customes & le Subsidie de Pondage doent estre pay & respond al Roy en les severall Port-towns del Ireland. A quel Certificate les Agents pur les dits Port-towns submittont eux mesmes devant les dits Seigniors del Councel, & agréront, que dehorsenavant les dits Customes & Pondage serront pay accordant. Et sur ceo cest Certificate fuit transmit en cest Realme, & enroll en le Exchequer icy: & accordant a ceo, depuis cest temps, les dits Customes & Pondage ont estre respond & pay al Roy en touts les Ports del Ireland.

Trinit'

Trin' 2. Jacobi.

Le Caſe de Mixt Moneys.

LA Roigne Elizabeth, pur paier les gages del Army Royall q̄ fuit maintaine en ceſt Realme pur pluſoꝛs ans, a ſuppꝛeſſer le Rebellion de Tyrone, cauſaſt un graund quantitie de Mixt Moneys, ove le uſuall ſtampe del Arms de Coꝛone, & Inſcription de ſa Royal Stile, deſtre coine in le Tower de London, & tranſmitte ceux Moneys en ceſt Realm, ove Pꝛoclamation poꝛtant dat 24. Maii, ann' 43 de ſa Reigne: per q̄ ſa Majeſtie declare & eſtabliſh ceux Mixt Moneys, immediatement apꝛes le dit Pꝛoclamation fait, deſtre le Loyall & currant money de ceſt Realme de Ireland, & exꝛpꝛeſſement command que ceux Moneys ſerront iſſint uſe, accept & repute, per touts les ſubjects, & auters uſant alcun traffique ou commerce deins ceſt Realm: & que ſi alcun perſon ou perſons refuſeront de receiver ceux Mixt Moneys, ſolonq̄ le Denominatiō ou Valuatiō ꝺ ceux, viz. Shillings p̄ ſhillings, & les pieces de 6 d. p̄ 6 d. & ſic de cæteris, eſteant tenꝺ p̄ paym̄t des alcuns wages, fees, ſtipends, ou debts, &c. ils ſerront puniſh come contemners de ſa Royall pꝛerogative & commandement. Et al entent q̄ ceux Mixt Moneys avoient le melieur courſe & paſſage, fuit ouſter declare per meſme le Pꝛoclamation, que apꝛes le 10. jour de June pꝛochein enſuant, touts auks Moneys q̄ux ont eſt̄ currant deins cē Realm devant le dit Pꝛoclamation, ſerront decry & adnull, & eſtæme

come Bullion, & nemy come loyall & currant Money deins ceſt Realme.

En Aprill, devant que ceſt Proclamation fuit publiſh, quant le pur coine Dengleterre fuit currant deins ceſt Realme, un Brett de Drogheda merchant, aiant achate certaine wares d̄ un Gilbert en London, devient oblige al dit Gilbert en obligation de 200. l. ſur condition que il payera al dit Gilbert, ſes executors ou aſſignes, 100. l. ſterling, currant & loyall money Dengleterre, a le Combe del Earle Strongbow in Chriſt-Church Dublin, al certaine jour avener: quel jour happoit deſtre apres le dit Proclamation, & eſtabliſhm̄t del Standard de Mixt moneys deins ceſt Realm: p̄ que al dit jour & lieu Brett fiſt tender del 100. l. en les Mixt moneys del novel Standard, en p̄formance del condition del Obligation avantdit. Et ſi ceſt Tender fuit ſufficient d̄ ſaver le forfeiture del dit Obligation, & ſi le dit Brett oze, ſur le change ou alteration des Moneys deins ceſt Realme, ſerra compell payer le dit 100. l. en auter ou meliour Coine que en les Mixt moneys, ſolonque le rate & valuation d̄ eux al temps del Tender, fuit le queſtion al Councell Table, ou le dit Gilbert, eſteant Merchant de London, ad exhibit Petition devs le dit Brett pur le ſpedie recoverie de ſon Debt avantdit.

Et pur ceo que ceſt fuit le generall Caſe del Realme, & fuit auxy de grand importance en conſideration & reaſon d̄ State, Sir George Cary, eſteant donques Deputie, & auxy Treaſurer del Roy, requiroit les chiefe Judges eſteant del Privie Councell de conferrer & conſiderer de ceſt Caſe, & de retourner a luy lour reſolution touchant ceo. Mueux, ſur conference & conſideration eu ſur touts points del dit Proclamation, fueront reſolve, que le Tender del dit 100. l. en les Mixt moneys, al jour & lieu avantdit, fuit bon & ſufficient en la Ley de ſaver le forfeiture del dit Obligation; & que Brett ne ſerra enforce al alcun temps apres d̄ paier auter Money en diſcharge de ceſt debt, forſque ceſt Mixt money ſolonque le rate & valuation que ceo avoit al temps de Tender. Et ceſt Reſolution fuit certifie per eux a le Seignior Deputie, & le Certificate enter en le Councell-Book. Et en ceſt Caſe divers points fueront conſider & reſolve.

1. Pri-

1. PRimerment fuit consider, q̃ en chescun Commonwealth il besoigne daver un certein Standard de Moneys. Car nul Commonwealth poet estre sans Contracts, & nul Contracts sans equalitie, & nul equalitie en Contracts sans money. Car com̃t que en les primer Societies del mound, Permutation del un chose p̃ auter fuit use, uncore bñ toft ceo fuit trove cumbersome, & le transportation & division des choses fuit trove difficult & impossible: & p̃ ceo Money fuit invent, cibien p̃ facilitie de commerce, que p̃ reducer Contracts al equalitie. Cum non facile concurrebat, ut cum tu haberes quod ego desiderarem, ego invicem haberem quod tu accipere velles; electa materia est, cujus publica & perpetua æstimatio difficultatibus permutationum subveniret. Paulus libr. 1. ff. de Contrahendis empt. Et p̃ ceo Money est dit per Bodin, mensura publica: & Budelius, li. 1. de Re nummaria ca. 3. dit, Moneta est justum medium & mensura rerum commutabilium; nam per medium Monetæ fit omnium rerum quæ in mundo sunt conveniens & justa æstimatio. Et a cest entent Keble dit, 12 H. 7. fol. 23. b. q̃ chescun chose poet estre value per Argent: per q̃l parol Argent il entend Money coined. Et le graund utilitie del un c̃tain Standard des Moneys & des Measures est bien monstre per Budelius en cest verse.

Una fides, Pondus, Mensura, Moneta sit una,
Et status illæsus totius Orbis erit.

2. SEcondment fuit resolve, que appertient solement al Roy Dengleterre de faire ou coyner Money deins ses Dominions, issint que nul auter person poet ceo faire, sans speciall Licence ou commandment del Roy. Et si ascun presume de faire ceo de son teste demesne, ceo est Treason envers le person del Roy per le Common Ley. Et ceo appiert per le Statute de 25 Ed. 3. cap. 2. que est forsq̃ declaration del Common Ley; & per Glanvil, Britton & Bracton devant cest Statute, Sramford fol. 2. & 3. Et en le Case de Mines, Plowd. Comment. fol. 316. a. cest point est expresse plus clærement, ou est dit, que le Roy avera les Mines d̃ Or & Argent: car si le subject averoit, il per la Ley ne poet coigner tielx Mettalles, ne mitter print ne value sur eux;

eux; car appertient al Roy ſolement de metter value al Coine, & faire le prize del quantitie, & de metter print a ceo; le quel esteant fait, le Coine eſt currant: & ſi ſubject ceo fait, ceo eſt grand Treaſon al Common Ley, come appert 23 Aſſ. p. 2. Et eſt grand Treaſon al Roy, p̄ ceo que il ad ſole power de faire Money, &c.

En ceſt livre 3 choſes ſont expreſſe queux ſont requiſite al feſans de loyall Money, viz. Authority del Prince, le Print, & le Value. Mes ſur le conſideration del Caſe en queſtion, fuit note & obſerve que 6 choſes ou circumſtances doent concurre p̄ faire loyall & currant money; 1. Weight, 2. Fineneſſe, 3. Impreſſion, 4. Denomination, 5. Authoritie del Prince, 6. Proclamation. Car cheſcun piece de Money doet aver un certaine proportion de Weight ou poize, & un certain proportion de Puritie ou fineneſſe, que eſt appel Alloy. Auxy cheſcun piece doet aver un certain forme del Impreſſion, que ſerra cognoſcibilis & diſcernibilis: car ſicome Cere neſt Seale ſans print, iſſint Mettall neſt Money ſans Impreſſion. Et Moneta dicitur à monendo, quia impreſſione nos moneat cujus ſit moneta. Cujus imago & ſuperſcriptio eſt hæc? Cæſaris. Date Cæſari quæ ſunt Cæſaris. Auxy cheſcun piece de money covient aver Denomination ou Valuation p̄ quant ceo ſerra accept ou pay, come pur un Penny, un Groat, ou un Shilling. Et tout ceo covient eſtre fait per Authority & commandment del Prince, car auterment le Money neſt loyal; & doet eſtre publiſh per Proclamation del Prince, car devant ceo le Money neſt currant.

Ceux circumſtances appearont en les auncient Ordinances fait per le Roy pur le Coinage de Moneys, cibien en ceſt Realme que en Engleterre, queux ſont deſtre trove en le Tower d̄ London la, & en le Caſtle d̄ Dublin icy. Auxy les Indentures enter le Roy & les Maiſters del Mint preſcribont le proportion de poize, fineneſs & alloy, l' impreſſion ou inſcription, le noſme, & le value. Vid. Stat. 2 H. 6. ca. 12. ou mention eſt fait de ceux Indentures. Vid. auxy Wades Caſe en le 5. part des Reports de le Seignior Coke, 114. b. q̄ le Roy per ſon Proclamation poet fair aſcun Coine loyall money de Engleterre: à fortiori, il poet per ſon Proclamation tantum eſtabliſh le Standard des Moneys coined per ſon authority deins ſes proper Dominions.

Et

Et que le Roy p ſon Prerogative poet aury mitter Prize ou Valuation ſur touts coines, appiert per un notable Caſe, 21 Edw. 3. fol. 60. b. En temps del William le Conqueror, le Abbe de Saint Edmonds Bury complainoit al Roy en Parliament, que ou il fuit exempt del juriſdiction del Ordinarie per divers auntient Charters, que le Eveſque de Norwich ad viſit ſon meaſon, encounter ceux Charters ô exemption. Per que fuit grant & ordaine in Parliament, que ſi de cel temps en avant le Eveſq de Norwich ou aſcun de ſes ſucceſſors alaſſent encounter le exemption avantdit, que ils payeront al Roy, ou a ſes heires, 30 Talents ou Beſauntes. Apres ceo, viz. en temps Ed. 3. le Eveſque de Norwich viſit la meaſon arrere, encounter le Ordinance avantdit: & ceſt Contempt eſteant trove en Bank le Roy, Scire facias iſſiſt vers Leveſque, a monſtrer pur que il ne payeroit al Roy les 30 Talents ou Beſauntes. Et ſur inſufficient plea plead per Leveſque, le Court agard que le Roy recovera les Talents ou Beſauntes, & que la prize ſoit interpret p le Roy meſme, de quel prize ils ſerront, plus ou meins. Per que eſt manifeſt, que ou Talents ou Beſaunts, ou auters tiels pieces ou quantities ô Or ou Argent, ſont de uncertaine value, (car Budæus dit, quod Talenta ſunt varia, & pondera ſunt potius quam numiſmata) le Roy meſme ad power de mitter certaine value ſur eux; ſolonque le rule bien conus al Civilians, Monetæ æſtimationem dat qui cudendi poteſtatem habet. Et en ceſt point la Common Ley Dengleterre agree bien ove les rules del Civil Ley, Jus cudendæ Monetæ ad ſolum Principem, hoc eſt, Imperatorem, de Jure pertinet. Monetandi Jus Principum oſſibus inhæret. Jus Monetæ comprehenditur in Regalibus, quæ nunquam à Regio ſceptro abdicantur.

Uncore per antient Charters ceſt priviledge ou prerogative ad eſtre communicate al aſcuns ſubjects en Engleterre: come al Archeveſque de Canterbury per Charter del Roy Athelſtane. Lambert Peramb. Kanc. fol. 291. Et Larchevesq de Yorke & Eveſque de Durham aveont mintes, & power de coigner Moneys, come appiert per le Statute de 14 H. 8. cap. 12. Et le Deane de Saint Martins le Graund ad meſme le priviledge, come eſt manifeſt per le Statute de 17 Edw. 4. cap. 1. Et ceſt Jus cudendæ monetæ ad eſtre grant al pluſors graund perſonages en Fraunce en temps parabant,

ravant, come Choppinus recite lib. de Domanio Franc. fol. 217.a. Et cē prerogative a ceſt jour eſt impart trope generalment al touts inferiors Princes & States de Germany, per grant ou permiſſion del Emperor. Car ceſt un Ley del Empire, Jus cudendæ monetæ, niſi cui ab Imperatore conceſſum fuerit, nemo uſurpato.

3. TIercement fuit reſolve, que ſicome le Roy per ſon prerogative poet faire Moneys de ql matter & forme luy plerra, & eſtabliſher le ſtandard de ceo, iſſint poet il changer ſon Money en ſubſtance & impreſſion, & enhaunſer ou abaſer le value de ceo, ou tout ouſterm̄t decrier & adnuller ceo, iſſint que ſoit forſque Bullion, a ſon pleaſure. Et nota que Bullion, que dicitur Latine Billio, eſt moneta defenſa & prohibita, quæ videlicet uſu caret.

Et que le Roy ad uſe ceſt prerogative en Engleterre, appiert per pluſors notorious chaunges del Money fait en temps del ſeverall Roys depuis le Norman Conqueſt. An. 26 Hen. 2. Moneta veteri reprobata, nova ſucceſſit; Matth. Paris Hiſt. mag. fol. 35. a. Anno 7 Johannis nobel Money fuit coigne, a quel temps le primer ſterling Money fuit fait ſolonque le opinion de Camden, ou il parle de Sterling caſtle en Scotland, fol. 700. b. An. 32 Hen. 3. le Roy fuit enforce de faire nobel Money, cum moneta Angliæ circumcidebatur à circumciſis Judæis, come Matth. Paris dit, fol. 703. a. Ann' 7 Ed. 1. le ſtandard del Moneys fuit renew, quant le ſterling penny fuit eſtabliſh de conteiner viceſimam partem unciæ, come appiert en veteri Magna Charta, en le Ordinance appell Compoſitio menſurarum, ou eſt ordeine, quod viginti denarii faciant unciam. Anno 29 Edw. 1. quaunt les Moneys appell Pollardes fuerōt decrie, nobel ſterling money fuit auxy coine. Vide 6 Ed. 6. Dier 82. b. & lib. Rubr. Scaccarii Dublin. part. 2. fol. 1. b. Apres ceo nobel Moneys ont eſtre fait 9 Ed. 3. & 13 H. 4. & 5 Ed. 4. & 19 H. 7. & 36 Hen' 8. Et darraignement 2 Elizabethæ, quant touts mixt & baſe Moneys fueront decrie, & le ſtandard de pure ſilver eſtabliſh, que continue a cē jour; de que Bodin fait honorable mention libr' 6. de Republica, cap. 3.

Et ſemble que ceux changes de Moneys en Angleterre fueront fait per le authoritie del Roy ſans Parliament, comēt

que

que pluſors Acts de Parliament ont eſtre fait pur ordering del eſchange, & a prohibiter le exportation des Moneys faits & ordeines per le Roy, & le importation & utterance de forreine & faux Moneys, ſur certeine paines & penalties, dont aſcuns fueront capitall, & aſcuns pecuniary. Et pluſors Ordinances del Roy fait ſans Parliament ſont appell Statutes, come Statutum de moneta magnum, & Statutum de moneta parvum; q̃ ſont iſſint noſme Statutes, p̃ ceo que le Ordinance del Roy ove Proclamation en tiel caſe ad le force del Act de Parliament.

Et ſicome le Roy ad uſe de chaunger le Standard de ſes Moneys, ceſtaſcavoire le forme & le ſubſtance; iſſint il ad uſe per ſon prerogative de enhanſer ou abaſer le valuation de ceo, nient obſtant que le forme & ſubſtance continue come il fuit devant. Et ceo fuit fait 5 Ed. 4. come appiert per le libre de 9 Ed. 4. fol. 49. 1. ou Danby dit, que un Noble eſt melior ore que il fuit Anno 20. de ceſt Roy, 20 d. en chelcũ Noble. Et le Roy H. 8. per ſpecial Commiſſion dat. 24. Julii, ann' 18. de ſon reigne, authorize le Cardinall Wolſey, ove le adviſe des auters del Counſell del Roy, de metter valuation ſur touts Moneys de Engleterre, de temps en temps, ſolonque les rates & values del Moneys de forreine nations, q̃r fueront adonques trop enhanſe, ſpecialment per le Emperor & le Roy de France, cõe eſt expreſſe en le dit Commiſſion. Vide auxy 6 & 7 Ed. 6. Dier 82. & 83. divers Caſes ſur imbaſement des Moneys.

Et eſt deſtre note, que enſ le an 36 H. 8. quant pluſors ſorts de baſe Moneys fueront coigne en Engleterre, & 2 Eliz. quant le pure Standard des ſilver Moneys fuit eſtabliſh, il y ad 3 notorious falles ou decries de baſe Moneys publiſh per Proclamation: le primer, 9. Julii 5 Ed. 6. le ſecond 17. Auguſti, eodem anno, come eſt expreſſe en Dier 83. a. le tierce, 28. Septembr. 2 Eliz.

Et ſicome le Roy ad touts foits uſe de faire & chaunger les Moneys de Engleterre, il ad auxy uſe meſme le prerogative en Ireland touts temps depuis le 12. an del Roy John, quãt le primer ſtandard des Engliſh Moneys fuit eſtabliſh en ceſt Realme: come eſt record per Matth. Paris Magna hiſt. fol. 220. b. ou il dit, que ceſt Roy eſteant in Ireland

conſtituit ibidem leges & conſuetudines Anglicanas, ponens ibid' Vicecomites alioſque miniſtros, qui populum Regni illius juxta Leges Anglicanas judicarent. Præfecit autem ibidem Johann' de Gray, Epiſcopum Norwicenſem, Juſtitiarium, qui denarium terræ illius ad pondus numiſmatis Angliæ fecerat publicari, & tam obolum quam quadrantem rotundum fieri præcepit. Juſſit quoque Rex, ut illius monetæ uſus tam in Anglia quam in Hibernia communis ab omnibus haberetur, & utriuſque Regni denarius in theſauris ſuis indifferenter poneretur.

Per que appiert que le Standard de Moneys en Engleterre & en Ireland fuit equall al primes, & que le Engliſh Money ne fuit un quart part melior in value que le Iriſh, come ceo ad eſtre depuis le temps del Edw. 4. Car devant, ſicome fuit un meſme Standard de Moneys en ambideux Realms, iſſint touts foits quant le Money fuit change en Engleterre, fuit auxy change in Ireland: cõe en le an 1279. viz. 7 Edw. 1. quant Edw. 1. eſtabliſh novel Money en Engleterre, come devant eſt monſtre, fuit auxy mutation des Moneys en Ireland; come eſt note en les Annals de ceſt Realme, publiſh per Camden, en ſon libre de Britannia, ou eſt dit que Anno 1279. Dominus Robertus de Ufford, Juſtitiarius Hiberniæ, intravit Angliam, & conſtituit loco fratrem Robert' de Fulbourne, Epiſcopum Waterford, cujus tempore mutata eſt Moneta. Iſſint 29 Edw. 1. quaunt per ſpecial Ordinance del Roy les Pollards & Crockards fuer decrie & adnull, meſme le Ordinance fuit tranſmitt en ceſt Realme, & enroll en le Elchequer icy; come eſt trove in libro Rubro Scaccarii hic part. 2. fol. 2. b. Auxy en les Annalls avantdit, eſt note en meſme le an, Numiſma Pollardarum prohibetur in Anglia & Hibernia.

Et ſicome le Standard des Moneys fuit equall, iſſint les Mints & Coinage en ceſt Realm fuit order & govern en meſme le manner come en Engletre: come appiert per le accompt del Donate & Andrew de Sperdſholt, Maiſters del Elchange al Dublin 9 & 10 E. 1. in Archivis Caſtri Dublin, & in libro Rubro Scaccar' hic part' 2. fol. 1. & in Rot. Parliament. in Caſtro Dublin 12 Edw. 4. cap. 60. Vide auxy pluſors Ordinances la touchant le Mint & Moneys, 7 E. 4. c. 9. 10 E. 4. c. 4. 16 E. 4. c. 2. 19 E. 4. c. 1. 1 R. 3. c. 7.

Des

Mes le primer differente & inequalitie enter les Standards del Engliſh Moneys & Iriſh Moneys eſt trove en 5 Edw. 4. Car donques fuit declare en Parliament icy, que le Noble fait en temps Edw. 3. R. 2. Hen. 4. Hen. 5. & H. 6. ſerroit de ceſt temps en avant currant en ceſt Realm pur 10 s. & iſſint le demy Noble, & touts auters Coines ſolonq; meſme le rate. Vide Rot. Parliament. 5 Edw. 4. cap. 40. & 11 Edw. 4. cap. 6. & 15 Edw. 4. cap. 5. in le office del Rolles in Caſtro Dublin. Apres quel temps le Money fait in Ireland, ou p Ireland, fuit touts foits meinder in valuation que le Money de Engleterre; & le uſuall propoꝛtion del difference fuit le quart part tantum; viz. le Iriſh Shilling fuit ſoꝛſque 9 d. del Engleterre. Vide le Proclamation avantdit, dat. 24. Maii 43 Eliz. enroll en le Chauncery icy, ou la Roigne fait mention de ceſt differente fait per les Progenitoꝛs enter le Standard des Moneys fait pur ceſt Realm & les Moneys Dengleterre. Et notá que ceo que eſt appell Standard del Money en ceſt caſe, eſt meſme ceo que eſt appell per le French Pied de money, per Bodin, Pes monetarum, quaſi Princeps ibi pedem figat, aiant fir & eſtabliſh le pois & purity del Money en un certaine propoꝛtion, que ne ſerra tranſgreſſe per les Moneyers.

Et iſſint eſt manifeſt, que les Roys de Engleterre ont toutfoits ew & exercile ceſt Prerogative d coiner, & changer le foꝛme, &, quant ils trobant expedient, de enhanſer & abaſer le value de Moneys, deins lour dominions. Et ceſt Prerogative eſt allow & approbe non ſolemt per le Cõmon Ley, mes auxy per les rules del Imperiall Ley. Budelius de Re nummaria libr. 1. cap. 5. Princeps ad arbitrium ſuum, irrequiſito aſſenſu ſubditorum, valorem monetæ conſtituere poteſt, quia populus, quantum ad hoc, omnem poteſtatem & juriſdictionem in Principem ſeu Imperatorem tranſtuliſſe dicitur. Et paulo poſt, en meſme le chapter, coment que aſcuns D D. ſont de opinion, Principem ſine aſſenſu populi monetam mutare non poſſe; uncoꝛe il conclude, Si Princeps conſueviſſet mutare monetam auctoritate propria, ſine conſenſu populi, à tempore cujus initii memoria non exiſtit, tunc libere impoſterum eum hoc facere poſſe. L. Hoc jure, Paragr' Ductus aquæ, ff. De aqua quotidian. &c. Et Covarruvias, lib. de Collation' veterum numiſmatum, cap. De mu-

tatione monetæ, dit, Princeps potest mutare monetam ratione publicæ utilitatis, viz. tempore belli, vel si alias utile populo sit futurum, ita etiam ut ex corio fieri possit. Et p̄ ceo est note per Molinæum, libro de Mutatione Monetæ, cap. 100. que le State de Rome in le primer Punick guerre, quant Annibal ad possesse grand part de Italy, & tout lour treasure fuit exhaust, enhansoit base moneys al grand values, pur payment de lour Armies; & uncore le Justice de cest State fuit donques famous per tout le mound. Mes Nihil est magis justum quam quod necessarium: per que appiert, que les Mixt Moneys fueront fait per la Roigne Elizab. sur just & honorable cause.

4. Fuit resolve, que le dit Mixt Money ayant le Impression & le Inscription de la Roigne de Englet̄re, & esteant proclaime pur loyall & currant Money deins cest Realme de Ireland, doet estre prise & accept p̄ Sterling money: & sur consideration d̄ cē point, le nosme & le nature de Sterling money fuit enquire & discover. Pur le nosme de Sterling, ascuns Doctors de la Ley Civile, esteant deceive p le erronious report del Polydor Virgil, ont conceive, que cest English money fuit appel Sterling, p̄ ceo que le form dun Stare, dōt le diminutive ē Sterling, fuit imprint ou stamp sur c̄. Et p̄ c̄ Covarruvias, lib. de Collatione veterum numismatum, c. 2. Sterling (dit il) est argenteus nummus Anglicus ex vicesima sexta parte unciæ, nam viginti sex nummi argentei sterlingi pendebant unciam, Autore Polydoro Virgilio in Historia Anglica, lib. 16. Dictus autem est hic nummus, ut idem Author tradit, Sterling, quod Sturnus avis, Anglicè Sterling, in altera parte nummi esset impressa. A mesme le entent Choppinus de Domanio Franc. lib. 2. tit' 7. ad cest note: Cæterum Errico 3. Britanniæ Rege primum percussa est nunc usitatissima sterlingorum moneta, ab effigie sturni sic dicta, anno 1249. Ceux DD. esteant aliens, fueront, come semble, misinforme per Polydor Virgil, que fuit auxy un Alien, & hospes in nostra Republica. Mes nostre Linwood auxy, (que fesoit son glosse sur les Provincial Constitutiōs de Englet̄re en temps H. 6.) titul' De Testamentis, C. Item quia, verbo, Centum solidos, dit, que Sterling' nomen erat argenteæ monetæ, & habebat similitudinem

nem denarii uſualis, hoc ſalvo, quod in una quarta habebat effigiem avis quæ vocatur Sturnus, Anglice Sterling.

Auters ont eſtre de opinion, que ceſt Engliſh money avoit le noſme de Sterling, pur ceo que le primer money de ceſt Standard fuit coigne in le Caſtle de Sterling in Scotland per le Roy Edw. 1. Mes ceo eſt auxy erroneous opinion, come eſt note per Camden in Scotia, pag. 700. ou il, parlant del Caſtle de Sterling, dit, Quod quidam monetam probam Angliæ, quæ Sterling money dicitur, hinc denominatam volunt, fruſtra ſunt: à Germanis enim, quos Angli Eſterlings, ab Orientali ſitu, vocarunt, facta eſt appellatio, quos Johannes Rex, ad argentum in ſuam puritatem redigendum, primus evocavit; & ejuſmodi nummi, Eſterlingi, in antiquis ſcripturis ſemper reperiuntur.

Et ceſt darraine opinion, ſans doubt, eſt le melieur & plus probable, per le Judgement de touts les bien doctes Antiquaries Dengleterre. Car en touts les auntient Statutes queux feſont mention de ceſt Money ceo eſt appell Eſterling. Come 9 Ed. 3. ca. 2. &c. Nul faux money ne counterfeate Eſterling ſoit emport en noſtre Realme. Et eodem Anno cap. 3. Nul Eſterling maile, ne ferling, ſoit found pur veſſell, &c. Et 25 Edw. 3. cap. 13. que le money de Or & Argent que ore court, ne ſoit pas empaire en pois ne en alloy, mes ſoit miſe en lantient eſtate come en le Eſterling. Et Matth. Paris Magn. hiſtor. fol. 403. ou il exprefſe le forme del Obligation per le Clergie del Angleterre fait al Bankers del Pape reſident en London, fait mention de ceſt Money per nomen Eſterlingorum. Noveritis nos recepiſſe ab A. & B. &c. centum uncias bonorum & legalium Eſterlingorum, treſdecim ſolidis & quatuor Sterlingis pro qualibet uncia computatis. Et en meſme le Autor, fol. 710. eodem tempore, dit il, Moneta Eſterlingorum, propter ſui materiam deſiderabilem, deteſtabili circumciſione cœpit deteriorari & corrumpi: & fol. 575. Comitiſſa de Biarde venit ad Regem cum 60 militibus, ducta cupidine Eſterlingorum, quibus noverat Regem Angliæ abundare, & accepit à Rege qualibet die pro ſtipendio treſdecim libras Eſterlingorum, &c. Et Hovenden in Richard. 1. fol. 377. b. fait mention de ceſt Money en ceux parols, Videns igitur Galfridus Eboracenſis electus, quod niſi mediante pecunia amorem Regis fratris ſui nullaten' habere poſſit, promiſit ei tria millia librarum

brarum Sterlingorum pro amore ejus habendo: & ceo fuit devant le temps del Roy John; per q̃ ſemble que le temps q̃nt ceſt Money fuit primerment coigne eſt incertaine. Car aſcuns dient, que fuit fait per Osbright, un Roy de Saxon race, 160 ans devant le Norman Conqueſt. Et iſſint, ſicut nummus dicitur à Numa, que fuit le primer Roy que feloit Moneys en Rome; iſſint Sterling dicitur ab Eſterlings, q̃x primes feloent le Money de ceſt Standard en Engleterre, per Metonymiam, cum inventorem pro re inventa ponimus, ut Cererem pro frumento, Bacchum pro vino, &c.

Et eſt deſtre obſerve, que les Eſterlings fueront les primer Founders de les 4 principall Cities del Ireland, viz. Dublin, Waterford, Corke, & Limrick, & del autes maritime Uilles en ceſt Realme, & fueront le ſole maintainours de traffique & commerce, que fuit tout oukerm̃t neglect per les Iriſh. Ceux Cities & Uilles fueront deſouth le protection del Roy Edgar, & Edw. le Confeſſor, devant le Norman Conqueſt. Et ceux Eſterlings en les antient Records de ceſt Realme ſont appell Oſtmanni. Et pur ceo, quant H. 2. ſur le primer Conqueſt penſoit mieux de peoplet ceux Cities & Uilles ove Engliſh Colonies deduce de Briſtow & Cheſter, &c. il aſſignoit al ceux Oſtmen certaine proportion de terre procheine adjoynant al cheſcun des dits Cities; quel portion eſt appell en les Records de auntient temps Cantreda Oſtmannorum. Et tout ceo fuit obſerve ſur le noſme de Sterling.

Pur le nature ou ſubſtance de ceſt Money, primerment fuit note, que le Coigne que fuit properment appell le Sterling fuit le denier ou penny de ſilver; come appiert en le Ordinance appell Compoſitio menſurarum, fait en temps Edw. 1. ou eſt dit, quod denarius Angliæ, qui nominatur Sterlingus, rotundus, ſine tonſura, ponderabit triginta & duo grana in medio ſpicæ, &c. Et cheſcun auter coigne ou piece de ſilver fuit meaſure per le Sterling penny: come le Groat cõtainoit le value de 4 Sterlings; & le halfe Groat le value de 2 Sterlings, 25 Edward. 3. cap. 6. & le Shilling conſiſtoit de 12 Sterlings, Linwood de Teſtamentis, C. Item quia, verb. Centum ſolidos; & le Marke conſiſtoit de 13 ſolidis & quatuor ſterlingis, come devant eſt monſtre, Matth. Paris Hiſt. magn. pag. 710. & le Maile fuit note per ceſt parol demi, viz. dimi-

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dia pars Sterlingi; & le Farthing per qua, viz. quarta pars Sterlingi. Vid. un Ordinance ſans date in magna Charta imprime per Totell Anno 1556. fol. 167. & en le vieux Abridgement de Raſtall, Tit. Money 52. Quia multorum Regum temporibus proviſum fuit, quod propter pauperes denarius argenti, viz. Sterlingus, divideretur in obolum & quadrantem, ex parte Domini Regis præcipitur, quod quicunque recuſaverit obolum vel quadrantem debitam habentem formam, capiatur, &c. Vid. 6 & 7 Ed. 6. Dier en le Caſe de Pollardes, ou appiert que Sterlingus & Denarius ſont tout unicar la eſt dit quod duo Pollardi currebant pro uno Sterlingo, & accordant duo Sterlingi [*forſan* Pollardi] fueront pay pro uno denario. Et revera en auncient temps cheſcun ſort de Money, fait de les ſeverall metalls dont money fuit uſualment coigne, fuit properment Denarius. Et pur ceo les French & Italians parlont properment, ou ils appellont touts moneys deniers, & danari: car nummi fuerunt vel cuprei, vel argentei, vel aurei: ſinguli argentei valebant decem cupreos, & ſic denarii ſunt appellati; & ſinguli aurei valebant decem argenteos, & en ceſt reſpect ceux fueront auxi denarii. Et le auncient proportion del Or al Argent fuit 10 al 1. Et ceſt proportion (come ſemble) David ad obſerve en le treaſure de Or & Argent que il ad prepare pur le erection del Temple: car le Text dit, 1 Chron. cap. 22. verſ. 14. que il ad probide a ceſt purpoſe cent mill talents de Or, & dix cent mill talents de Argent. Iſſint le primer & proper Sterling coine fuit Denarius.

Et pur le ſubſtance de ceſt denier ou Sterling pennie in pondere & puritate: Quant al Pois, ceo fuit al primes viceſima pars unciæ, viz. un ounce fuit tallie en 20 Sterling deniers, & nient plus. Vid. Compoſitio menſurarum, fait en temps Edw. 1. in veteri libro de Magna Charta fol. 113. b. Et en le vieux Abridgement de Raſtall, Tit. Weights & Meaſures 4. ou eſt dit, Quod viginti denarii faciunt unciam, & duodecim unciæ faciunt libram. Et iſſint le Sterling pennie fuit le vint part del ounce, tanque 9 Edw. 3. a quel temps le ounce de ſilver fuit tallie en 26 pence; Annales del Rob. de Avesbury MS. Vid. pluſors Ordinances touchant le novel Sterling Money fait 9 Edw. 3. Raſtall, Money 345. Et tiel proportion fuit continue tanque 2 Henr. 6. quant le ounce del ſilver ſeſoit 32 pence: & ceo appiert per le Statute de 2. H. 6. cap.

6. cap. 13. & auxi per Linwood de Teſtamentis cap. Item quia, verb. Centum ſolidos: Hic ſolidus (dit il) ſumitur pro duodecim denariis Anglicanis: horum viginti ſex ponderabant unciam, cum tamen jam 32 denarii vix faciant unciam. Et ceſt gloſſe fuit eſcript en commencement del reigne de Hen. 6. come il meſme expreſſe en le Preface a ſon livre. Ceſt Standard fuit continue juſques al 5 Edw. 4. & donques le ounce del ſilver ſeſoit 40 pence. 9 Edw. 4. 49. a. & 12 Ed. 4. cap. 60. in Rot. Parliament. Dublin. Et ceo continuoit juſques al 36 Henr. 8. quant le Roy preparoit ſon journey al Bullogne, & donques un ounce de ſilver fuit divide en 45 pence; que ne fuit alter juſques al 2 Elizabeth, quant le ounce de pure ſilver fuit tallie en 60 pence: & ceſt Standard remain a ceſt jour. Et iſſint le Sterling penny, que fuit al primes viceſima pars unciæ, eſt ore ſexageſima pars unciæ; & per conſequence, le auntient Sterling penny containoit tant de ſilver quant eſt contain en le piece d trois deniers q eſt currant a ceſt jour.

Et quant al Puritie de ceſt Sterling Money, 18 s. 5 d. ob. argenti puriſſimi continebatur in qualibet libra, & quælibet libra de Sterling money avoit 18 d. ob. d allay de copper, & nient plus. Et de ceſt allay de Sterling money les Ordinances ou Statuts d 25 E. 3. ca. 13. & 2 H. 6. ca. 13. font mention. Mes ceo eſt bien conus al touts Moneyers, & eſt conteine en touts les Indentures fait enter le Roy & les Maiſters del Minte.

Donques le Sterling Money eſteant de tiel pois, & de tiel fineneſs, le doubt prima facie fuit, come ceſt Mixt Money ſerra dit Sterling. Et pur le clearing de ceſt doubt, fuit dit, que en chelcun coine ou piece de money eſt bonitas intrinſeca, & bonitas extrinſeca. Intrinſeca conſiſtit in pretioſitate materiæ, & pondere, viz. fineneſſe, & weight. Extrinſeca bonitas conſiſtit in valuatione ſeu denominatione, & in forma ſeu charactere. Budelius de re Nummaria lib. 1. cap. 7. Et ceſt bonitas extrinſeca, que eſt auxy dit Æſtimatio ſive valor impoſititius, eſt formalis & eſſentialis bonitas monetæ; & ceſt forme dat nomen & eſſe a le Money: car ſans tiel forme le plus precious & pure mettall que poet eſtre neſt pas Money. Et pur ceo Molinæus libro de mutatione Monetæ dit, Non materia naturalis corporis monetæ, ſed valor impoſititius eſt forma

ma & ſubſtantia monetæ, quæ non eſt corpus phyſicum, ſed artificiale, come Ariſtotle dit Ethicorum lib. 5. Et auxi Politicorum primo il dit a ceſt effect, que Money fuit primerment ſigne & imprint ove certeine character, al intent que le people acceptera ceo ſur credit del Prince ou State que publiſh ceo, ſans examination ou trial del Pois ou Purity. Et a ceſt entent Molinæus ad ceſt Rule, Q. 99. de Jure, Non refert ſive plus ſive minus argenti inſit, modo publica, proba & legitima moneta ſit. Et Baldus l. ſingulari dit, In pecunia potius attenditur uſus & curſus quam materia. Et Seneca lib. 5. de Beneficiis, Æs alienum habere dicitur, & qui aureos debet, & qui corium forma publica percuſſum. Et fuit dit q̃ le Roy ad meſme le prerogative a doner value al baſe mettall per ſon Impreſſion ou Character, come il ad a doner eſtimation al un mean perſon per imparting le Character del honor a luy; Sic fiet viro quem Rex honorare deſiderat.

Et iſſint fuit conclude, que apres que les Eſterlings, per commandment del Roy del Engleterre, ont fait ceſt pure Engliſh money, que à nomine opificum fuit appel Eſterling ou Sterling Money, (le Standard de quel Money ad eſtre touts foits le plus fixt & unmoveable Standard de Money en tout le Mounde, que ad eſtre grand honor al noſtre Nation; car en touts auts Realms & States les Standards de lour Moneys ſont plus unſteddie & variable;) touts Moneys coigne per le authoritie del Roy Dengleterre, & aiant ſon Character & Impreſſion, non ſolement en Engleterre, mes auxy en Scotland & Ireland, ont eſtre Sterling moneys, & iſſint appell, repute, & accept per touts gents, ſoit le matter d ceo mixt ou pure. Et ceo appiert per le Ordinance que eſt appell Statutum de Moneta magnum, per quel touts Moneys ſont prohibite forſque le Money del Engleterre, de Ireland, & de Eſcoſſe, que fuit properment le Sterling money. Et pur ceo Freherus, libro de Re nummaria, ubi numerat varias variarum gentium monetas, Sterlingi, inquit, habentur in Anglia, Scotia & Hibernia. Et Bodin. lib. 6. de Republica, ca. 3. parlant del Money d Scotland, En Eſcoſſe, dit il, ſont deux livres fort differents, lun de Eſterlinges, le auter uſagere. Et certes le uſual Scottiſh liver eſt ſemble al French liver, & le liver de Eſterlings currant la eſt celle Dengleterre. Et que baſe ou Mixt Money

ney poet estre currant pur Sterling, appiert per le dit Case de Pollards, Dier 82. b. ou est dit, Quod currebat quædam moneta in Anglia loco Sterlingi quæ vocabatur Pollardes, sc. duo Pollardi pro uno Sterlingo.

5. Fuit resolve, que coment que cest Mixt Money fuit fait destre currant deins cest Realme de Ireland solement, uncore ceo poet estre bien dit currant & loyall money Dengleterre, pur 2 causes. 1. Pur ceo que cest Realm est forsque Member del Imperial Coronne Dengleterre. Et ceo appiert 3 Henric. 7. fol. 10. a. ou question fuit propound a les Justices per Hobart Atturney generall, Si quis sciens monetam ad similitudinem monetæ Regis Angliæ contrafactam, talem monetam in Angliam extra Hiberniam deferat, si sit proditio necne. Et dixerunt, quod Hibernia est quasi Membrum Angliæ, & ibidem legibus Angl' utuntur, & authoritate Regia faciunt monetam. Et a cest intent est recite en le Statute de Faculties, enact en cest Realm 28 Henr. 8. cap. 19. That this the King's Land of Ireland is a Member appendant and rightfully belonging to the Imperial Crown of the Realm of England, and united unto the same. Et en le Act ô 33 H.8.cap.1. p que le Stile & Title del Roy de Ireland fuit done al Henr. 8. ses Heirs & Successors, est ouster enact, que le Roy enjoyera cest Stile & Title, & touts auters Royall Preheminences, Prerogatives & Dignities, as united and annexed to the Imperial Crown of the Realm of England.

2. Est appell loyall Money Dengleterre, en respect del lieu de Coinage, que fuit en Engleterre, viz. en le Tower de London. Car coment que en antient temps le Roy avoit plusors Mints en cest Realme, sicome il avoit en Engleterre; uncore depuis le commencement del Reigne de la Roigne Elizabeth, touts les Mints ont estre reduce al un lieu, viz. al Tower de London. Et ceo fuit fait sur bon reason de state, p̃ avoider falsification des Moneys. Et p̃ ceo, devaunt le Norman Conquest touts Moneys fueront coigne en Monasteries: car fuit presume, que in tiels measons nul falsitie ou corruption serroit trove. Et ceo agree ove le prudence del Romane state, que navoit forsque un Mint pur tout Italy, & ceo fuit en le Temple

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de Juno al Rome, que pur ceſt cauſe fuit appell Juno moneta. Et a ceſt entent le Emperor Charlemaine feſoit un ley en ceux parolx, viz. De falſis monetis, quia in diverſis locis contra Juſtitiam fiunt, volumus ut in nullo alio loco moneta, niſi in Palatio noſtro, fiat. Choppinus de Domanio Franciæ, fol. 217. a. Uncore en 28 Ed. 1. ceſt prudent Roy, pur le facilitie de eſchaunge, cauſaſt pluſors Mints deſtre eſtablish en ſeverall Villes de Engleterre: un en le Tower de London ove 30 furnaſſes, auter al Canterbury ove 8 furnaſſes, auter al Kingſtone ſuper Hull ove 4 furnaſſes, auter al Newcaſtle ſur Tine ove 2 furnaſſes, auter al Briſtow ove 4 furnaſſes, & auter al Exceſter ove 2 furnaſſes. Tractat. de Moneta Angliæ fait en temps Edw. 1. que jeo trove en le Libarie de Sir Robert Cotton, que fuit le livre de Sir Burleigh jadis Grand Treaſurer Dengleterre. Vide aux les Cloſe Rolls 29 Ed. 1. in Turre London. Et ceo appiert aux p lenſcription de divers antient Coines, ſur queux ſont exprefſe les noſmes des Cities ou fueront coined, accordant al verſe fait en temps Ed. 1. & prife p Stow hors de Robert le Brun un antient M S.

Edward did ſmite round penny, halfpenny, farthing:

& donques enſuiſt,
On the King's ſide was his Head and his Name written;
On the Croſſe ſide the Citie where it was ſmitten.

Et meſme ceſt Roy, ayant eſtablish un Mint al Dublin ove 4 furnaſſes, & ayant conſtitute Alexander Norman de Luik Maſter des Moneys la, come appiert en pluſors Records in Archivis Caſtri Dublini, apres, viz. 32 Ed. 1. quant il avoit alter le forme del Coigne, il cauſaſt divers ſtamps conſiſtant de 2 parts, dont le un contenoit le Pile, & le auter le Croſſe, deſtre tranſmit al Treaſurer de ceſt Realme, come eſt record in libro Rubro Scaccar' hic, en ceſt manner: Magiſter Gulielmus de Wimundham, cuſtos Cambiorum Domini Regis in Ang', de præcepto venerabilis Patris Bathon. & Wellenſis Epiſcopi, Theſaurarii ejuſdem Domini Regis, miſit Domino Gulielmo de Eſenden, Theſaurario in Hibernia, viginti quatuor pecias cuneorum, pro moneta ibidem facienda, viz.

tres pilas cum ſex crucellis pro denariis, tres pilas cum ſex crucellis pro obolis, & duas pilas cum quatuor crucellis pro ferlingis, per Johannem le Minor, Thomam Dowle & Johannem de Shorditch, Clericos, de ſocietate operariorum & monetariorum London, per eoſdem ad monetam prædictam operandam & monetandam: & la eſt auxy exprẽſſe entry fait, devant queux teſmoignes les dits ſtamps fueront deliver. Car Cuneus monetæ tanquam ſigillum Regni cuſtodiri debet, come eſt dit en le Treatiſe de moneta Angliæ, fait en le temps Ed. 1. mẽtion devant: & le reaſon eſt, p̃ ceo que de counterfeiter lun & lauter eſt hault treaſon.

Et a ceſt temps fuit forſque un Minte in Ireland, ceſt aſcavoire al Dublin: mes longe temps apres, viz. 3 E. 4. un Mint fuit eſtabliſh al Waterford, & auter al Trim, & auter al Galway, Rot. Parliament. 3 E. 4. in Caſtro Dublin. Et 12 Ed. 4. Rot. Parliament. ibidem, eſt ordeine que les Maiſters de Mint en Ireland faieront en les Caſtles de Dublin & Trim, & en le Ville de Drogheda, cinque ſortes de coines, le Groat, le halfe-groat, le Penny, halfe-penny, Farthing. Per que eſt manifeſt, que en temps paravant ount eſtre 5 ſeverall Mints en Ireland en les ſeverall Villes avantdit. Mes touts ceux fueront diſcontinue en temps Edw. 6. iſſint que depuis le reigne de ceſt Roy touts les Moneys faits pur Ireland ount eſtre coigne en Engleterre; & pur ceo ceſt Mixt Money, coined en le Tower de London, poet eſtre dit properment currant & loyall Money Dengleterre.

6. DArraignment fuit reſolve, que coment que al temps del Cõtract & Obligation fait en le caſe avantdit, pure money d'Or & Argent fuit currant deins ceſt Realme, ou le lieu de payment fuit aſſigne; uncore le Mixt Money, eſteaunt eſtabliſh en ceſt Realme devaunt le jour de payment, poet eſtre bien tender en diſcharge del dit obligation, & le obligée eſt lie de accepter ceo: & ſil ceo refuſe, & tarye tantque le Money ſoit chaunge arreare, le obligor neſt tenus de payer auter Money de melieur ſubſtance, mes ſuffiſt ſil ſoit touts temps preſt de payer les Mixt Moneys, ſolonque le rate pur que ceux fueront currant al temps del tender. Et ceſt point fuit reſolve ſur conſideration de

2 Circumſtances, viz. le Temps & le Lieu de payment. Car le temps eſt future, That if the ſaid Brett ſhall pay or cauſe to be paid one hundred pounds ſterling currant money, &c. Et pur ceo tiel money ſerra pay que ſerra currant a tiel future temps, iſſint que le temps del payment, & nemy le temps del contract, ſerra reſpect.

Aury le future temps eſt entend per les parols currant Money, car choſe que eſt paſſe neſt in curſu. Et pur ceo touts les Doctors queux eſcriant de re Nummaria agréont en ceſt Rule, Verba currentis monetæ tempus ſolutionis deſignant. Et a ceſt entent ſont pluſors Caſes ruled in noſtres livres 6 & 7 Edw. 6. Dier 81. b. Apres le fall & embaſement des Moneys 5 Ed. 6. Debt fuit port vers executors de leſſée pur ans, pur rent arrere pur 2 ans finie al Mich. 2 Ed. 6. a quel temps le ſhilling, que al temps del action port fuit decrie al 6 d. fuit currant pur 12 d. En ceſt caſe les defendants pleadont Tender del rent al jours quant ceo fuit due, in peciis monetæ Angliæ vocat' Shillings, & que cheſcun Shilling al temps del Tender fuit ſolubilis pur 12 d. mes le plaintife ne nul auter pur luy fuit priſt de receiver ceo, &c. Et concludont, que ils ſont uncore priſt de payer les arrerages in dictis peciis vocat. Shillings ſecundum ratam, &c. Sur ceſt plea coment que le plaintife demurroit, uncore il fuit content de prender le Argent ſecundum ratam prædictam, ſans coſts ou damages. A meſm le entent eſt le caſe de Pollardes adjudge 29 Ed. 1. & report per Dier 7 Ed. 6. fol. 82. b. ou en debt ſur obligation pur paiment de 24 l. al 2 ſeveral jours, le defendant plead que al jours limit pur payment de debt en demaund, currebat quædam moneta quæ vocabatur Pollardes loco Sterlingi, &c. & que le defendant al primer jour de payment ad tender le moietie del det en le Money appell Pollardes, que le plaintife refuſe, & q̃ il eſt uncore priſt, &c. & offer ceo in court; que neſt deny per le plaintif. Ideo conceſſum eſt que il recobe un moietie en Pollardes, & le auter in pure Sterling money. Vide 9 Edw. 4. 49. a. un notable Caſe ſur chaunge de Moneys, ou eſt dit que ſi home en action de debt demaund 40 l. ſerra entend money que curge al temps de briefe purchaſe. Et la un Caſe de temps Ed. 1. eſt miſe, que eſt direct a ceſt purpoſe. En debt port ſur fait

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de 30 quarters de orge, price 20 l. fuit trove pur le plaintife; & le Jury fuit charge de enquire del price al temps del payment: & fuit dit, que al temps del payment un quarter fuit al 32 s. mes al temps de felans de fait fuit forſque al 3 s. Et le plaintife recover 18 l. pur le blæ, accordant al price que fuit al temps del payment. Auxy a ceſt entent Linwood ad un notable Gloſſe ſur le Conſtitution de Simon Mepham, libr. 3. de Teſtamentis, cap. Item quia. Car, ou le Conſtitution eſt tiel, Pro publicatione teſtamenti pauperis, cujus Inventarium bonorum non excedit centum ſolidos Sterlingorum, nihil penitus exigatur; il fait ceſt Gloſſe, Hic Solidus ſumitur pro duodecim denariis Anglicanis, &c. Sed quæro, inquit ille, numquid circa hos centum ſolidos debeat conſiderari valor in moneta jam currente, vel valor Sterlingor' qui currebant tempore Statuti. Et la il reſolve, quod ubi diſpoſitio ſurgit ex Statuto, ut hic, licet moneta ſit diminuta in valore, tamen debet conſiderari reſpectu monetæ novæ currentis, & non reſpectu antiquæ. Nam mutata moneta, mutari videt' Statutum, ut ſcilicet intelligatur de nova, & non de veteri. Vide Regiſtr' fol. 50. a. & 54. b. ou le Roy maunde ſõ brefe deſtre certifie del value del Eſglife: Les parolx del brefe ſont, Secundum taxationem decimæ jam currentis. Et 31 Ed. 3. Fitz. Annuitie 28. Annuitie fuit grant al I. S. tanque il fuit promote per le Grantor al ſufficient Benefice: I. S. port brefe de Annuity vers le Grantor, que plead que il ad tender al plaintife ſufficient Benefice. Et la iſſue eſt prile ſur le value del Benefice al temps del Tender.

Mes fuit dit, que coment que en Contracts ceux parolx, currentis monetæ, ſerront referre al temps del payment; uncore en darrein bolunts ſerront referre ad temps conditi Teſtamenti; car le bequeſt eſt en le preſent temps, Item I give and bequeath, &c. & pur ceo Legacies ſerront pay en tiel money que fuit currant al temps del felans del Teſtament, ou ſolonque le rate de ceo. Fuit auxy dit, que ſi home ad 1000 l. pure ſilver en Marriage ove ſa feme, & apres ils ſoent divorce cauſa præcontractus, per que la feme receivera ſa portion; ou ſi home recover per erroneous Judgement 100 l. en debt, & ad execution en pure ſilver money, & apres le Judgement eſt revers, iſſint que

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il ſerra reſtore a tout ceo que il ad perd; coment que baſe money ſoit eſtabliſh en le meane temps, reſtitution ſerra en tiel money que fuit currant al temps del Marriage, & al temps del recoverie. Mes ceux darraine Caſes ne fueront reſolve.

Et p̄ le circumſtance de Lieu, fuit reſolve, que cõm̄t que le contract fuit fait en London, un̄ le lieu de paiment eſteant appoint in Dublin, il covient de neceſſitie que le obligor ſeroit ſon tender en le Mixt money al temps de paiment; car tout auter Money fuit decrie & fait Bullion per le Proclamation avantdit, & ceſt Money ſolement eſtabliſh: iſſint que ſi le obligée ad refuſe ceſt Mixt money, il ad cõmit contempt pur que il ſerroit puniſh. Auxy les Judges de la Ley ne ſont tenus de prender notice del alcun Money que neſt currant per Proclamation. Et pur ceo, Priſott dit 34 H. 6. fol. 12. a. nous ne ſomus apprīſe de 6 l. Flemiſh, come ſomus de cent Nobles. Et p̄ ceo en touts Contracts de Merchants, Conſuetudo & ſtatuta loci in quem eſt deſtinata ſolutio reſpicienda ſunt; Budelius de re Nummaria lib. 2. cap. 21. Et pur ceo fuit dit, que ſi a ceſt jour la Ley ſerra prīſe come fuit prīſe en temps Ed. 1. que ſur Judgemẽt en debt done en Engleterre, ſur Teſtatum que le defendant nad riens en Engleterre, mes que il ad biens & terres en Ireland, briefe de execution ſerra agard al Juſtice ou Deputie de Ireland, p̄ lever le debt la; quel briefe eſt trove in Regiſtro brevium Judicialium, fol. 43. b. Le ſum en tiel Caſe ſerroit levie ſolonque le rate de Iriſh money, & nemy de Engliſh money, & en tiel coine que ſerroit currant en ceſt Realme al temps de execution fait.

Et accordant a ceſt Reſolution, pluſors auters Caſes ſur meſme le Point fueront aprēs rule & adjudge en les ſeveral Courts de Record al Dublin.

Hillar'

Hillar' 5. Jacobi,

En Bank le Roy.

Le Caſe de Taniſtry.

EN Ejectione firmæ enter Murrough mac Brien Plaint. & Cahir O callaghan Defendant, ſur generall iſſue joyne, le Jury trove ſpeciall Verdict, a ceſt effect: viz. Que le Caſtle & terres de Drominyn, ou le Entrie & Ejeament eſt ſuppoſe deſtre fait, giſont deins certaine lieu ou pzecinct de tre appel Publicallaghan, alias O callaghans coũtry, deins le County ď Corke, & de temps dont memozy ne court, &c. ont eſtre de Tenure & Nature de Taniſtry: & q̃ en touts les terres de Tenure & Nature de Taniſtry deins Publicallaghan avantdit, tiel Cuſtome ad eſtre uſe & appzove de temps dont memozy ne court, &c. viz. Que quaunt alcun perſon mozuſt ſeiſie des alcuns Caſtles, Manozs, Terres ou Tenements del Nature & Tenure avantdit, que donques meſme les Caſtles, Mannozs, Terres & Tenements doent deſcender, & de tout temps avantdit ont uſe de deſcender, Seniori & digniſſimo viro Sanguinis & Cognominis de tiel perſon que iſſint mozuſt ſeiſie. Et que le File ou le Files de tiel perſon iſſint mozant ſeiſie,

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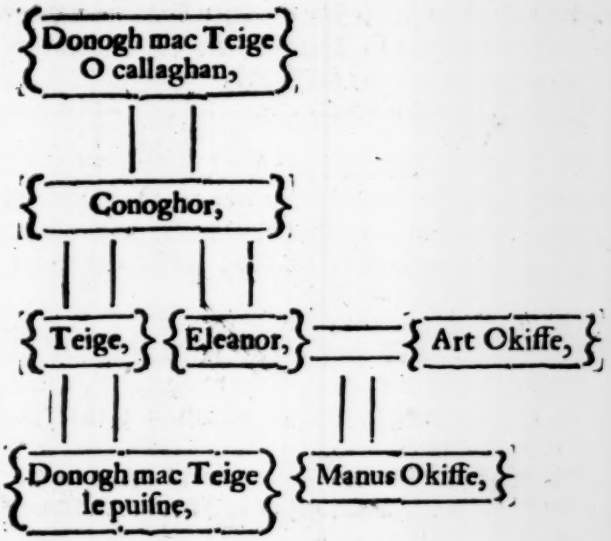
de touts temps avantdit, ne fueront inheritables de tiels terres ou tenements, ou de alcun part de eux.

Le Jury trove ouſter, que (accordant a ceſt Pettigree)



Donogh mac Teige O callaghan, chiefe de ſon noſme, fuit ſeiſie del Sſiourie ou Chiefetainſhip de Poblicallaghan, & des fres avantdit, ſolonqꝫ le cuſtome & courſe del Taniſtry, & iſſint ſeiſie ad iſſue Conoghor O callaghan. Conoghor ad iſſue fits & fille, viz. Teige & Eleanor. Teige ad iſſue Donogh mac Teige le puiſne: Eleanor, eſteant marrie al Art Okiffe, ad iſſue Manus Okiffe. Conoghor O callaghan & Teige ſon fits devdont en le vie del Donogh mac Teige le eigne. Apres le dit Donogh mac Teige le eigne per feoffement, ſolonque le courſe del Common Ley, executé eſtate al Donogh mac Teige le puiſne, & al heires males de ſon corps, Remainder al droit heires del feoffor. Donogh mac Teige le eigne morust: Donogh mac Teige le puiſne morust ſans iſſue male. Apres que mort, un auter Conoghor O callaghan, eſteant le pluis eigne & le pluis digne del ſang & ſurnoſme del O callaghan, enter en la terre ou, &c. & claime de tener ces come Seignior ou Chiefe-

taine de Poblicallaghan, ſolonque le courſe del Taniſtry, & fuit de ceo ſeiſie, prout lex poſtulabat.

Eſt trove ouſter, que le dit Conoghor iſſint ſeiſie ſurrender le dit terre, & tout ſon eſtate, droit & intereſt en ceo, al Roigne Eliz. ſur que la dit Roigne, per Letters patents dat. 7. Decembris, anno 37. de ſa Reigne, en conſideration del dit Surrender, regrant la dit terre al dit Conoghor & ſes heirs, que enter, & enfeoffe un Fagan, que enfeoffe Brien mac Owen, leſſor del plaintife.

Et eſt darrainm̃t trove, que Art Okiffe & Eleanor ſa feim̃ deviont, & que apres lour mort, Manus Okiffe enter, & enfeoffe Cahir O collaghan le defendant, que ent̃ & eject le leſſee del Brien mac Owen. Et ſur tout ceſt matter les Jurors priont le adviſe del Court, &c.

Sur que un maine queſtion ſurdoit, viz. ſi le title del hre al Common Ley, que le Defendant ad, ou le title del Taniſt, que eſtate le leſſor del Plaintife ad, ſerra preferre, come ceſt caſe eſt. Et en le diſcuſſing de ceſt Queſtion 3 principal Points fueront move & argue.

1. Si le dit Cuſtome de Taniſtry ſoit void ou nemy en luy meſme, ou auterment aboliſh per le Introduction del Cõmon Ley Dengleterre.

2. Admit que ſoit bon Cuſtome, & nient aboliſh p le Common Ley, ſi ſoit diſcontinue & deſtroy per le Feoffem̃t, q̃ create & limit eſtate taile en la terre, ſolonque le courſe del Cõmon Ley, iſſint que ne ſerra reduce al courſe de Taniſtry quant le eſtate taile eſt determine.

3. Si Conoghor O callaghan, que enter come Taniſt apr̃ le eſtate taile determine, ad gaine melieur eſtate per ſon Surrender al Roigne Elizabeth, & le regrant fait a luy per Letters patents.

1. QUant al prime Point, fuit object per le Counſell del Plaintife, que le dit Cuſtome de Taniſtry, come eſt trove, eſt bon per les Rules del Common Ley. Car 3 choſes doent conturre pur faire bon Cuſtome, Antiquity, Continuance, & Reaſon. Et eſt expreſſement trove q̃ ceſt Cuſtome eſt auntient devant temps de memory, & continuall de temps dont memorie ne court; & pur ceo ſi ſoit reaſonable auxy, ceo ad touts qualities de bon Cuſtome.

Et

Et certes, ceſt Cuſtome que done la terre al pluis eigne & pluis digne home del ſang & ſurnoſme del ceſty que moruſt ſeiſie, eſt fort reaſonable en ceſt Realme, p ceo que il poet mieux manure la terre, & defender ceo, que un enfant ou feme. Et le continuance de terre en le ſang & ſurnoſme eſt bon reaſon & conſideration de raiſer uſe. Plowd. Comment. fol. 305. Baintons Caſe, ou le dignitie del heire male eſt expreſſe en pluſors caſes: p que ceſt Cuſtome ne fault reaſon p defence de ceo. Et Littl. lib. 1. fol. 17. a. miſe ceſt Rule, ceſtaſcavoire, que en divers Seigniories & divers Mannors ſont pluſors & diūs Cuſtomes q̄ſit a p̄n̄ō Tenements, & quant a pleader, & quant al auters choſes; & tout ceo que neſt pas encounter reaſon poet l̄ī eſtre admit & allow.

Et coment que ceſt Cuſtome ſerroit repugnant al Rule del Common Ley, ceo ne prove ceo deſtre unreaſonable: car les Cuſtomes de Borough Engliſh & de Gavelkind ſont contrarie al Common Ley en le point de diſcent de Inheritance, & uncore ſont approve come reaſonable Cuſtomes. Iſſint le Cuſtome del turning le Plow ſur headland de un aut, & de drier netts ſur auter terre, 21 Edw. 4. 50. 8 Edw. 4. 19. Iſſint que feoffem̄t ove garranty fait per tenant en taile ne ſerra diſcontinuance, ceo eſt contrary al Rule del Ley, & uncore bon Cuſtome. 30 Aſſ. p. 47. Et pluſors caſes fueront miſe a ceſt entent.

Et ſicome ceſt Cuſtome neſt voide pur fault de Reaſon, iſſint neſt voide pur fault de Certeinty. Car la terre diſcendera al pluis eigne & pluis digne. Le pluis eigne poet eſtre certeinment conus; mes le pluis digne ſemble deſtre uncertein: car que ſerra Judge de ceo? certes la Ley, que eſt tout foits certeine & infallible en ſa Judgement. Et la Ley dirra que le pluis eigne eſt le pluis digne, cibien in ceſt Caſe come en auter Caſes de ceſt nature. Et pur ceo Lit. dit en le Caſe de 3 freres, ſi le mulnes purchaſe terres & moruſt ſans iſſue, le eigne frere avera la terre per diſcent, pur ceo que le eigne eſt pluis digne de ſang. Et en le chapter de Remitter il dit, lou home ad 2 titles a terres & tenements, viz. un plus auncient, & auter plus darraine, la Ley adjudgera luy eins per force del pluis eigne title, pur ceo q̄ le pluis eigne title eſt le pluis ſure title & le pluis digne

title. Vid. Plow. Comment. 259. a. Mes admitt que le affirmative part del Cuſtome, viz. que la terre deſcendera al pluis eigne & pluis digne home, &c. ſerroit voide, uncore le negative part del Cuſtome, viz. que les files ne ſerront inheritable, eſt bon: car ſont pluſors bon Cuſtomes en le negative, encounter les expreſſe Maximes & Rules del Common Ley. Come q̃ feme navera dower, ou el ad receive part des deniers p̃ le ſale del terre; 20 Ed. 3. Br. Cuſtoms 53. Et le Cuſtome en Kent, que le Seignior navera terre p̃ Eſcheat, The father to the Bough, and the ſon to the Plow. Et le Cuſtome de que Kitchen parle fol. 149. b. que ſi home marry widdow el navera dower. Et donque ſi ceſt part del Cuſtome ſoit bon. Judgm̃t ſerra done encounk le Defendãt, p̃ ceo que il derive ſon title del file, que eſt heire generall al Common Ley.

Et ceſt Cuſtome neſt aboliſh p̃ l'introduction del Common Ley p̃ divers reaſons.

1. Pur ceo que eſt reaſonable Cuſtome, & agreeable al Rules del Common Ley, come d̃vant eſt monſtre. Et ſur ceſt reaſon eſt reſolve 21 Eliz. Dier 363. q̃ le Cuſtome de vil d̃ Denbigh in Gales, q̃ un feme covert obeſque ſa Baron poet alien ſa terre per ſurrender & examination en Court la, & ceo liera la feme & les heirs come fine, neſt toll per le ſtatuk d̃ 27 H. 8. coment que ceſt Act introduce le Common Ley en Gales, come appiert per le title de ceo, For Laws and Juſtice to be miniſtred in Wales in like force as in the Realm of England.

2. Coment que le Brehon Ley, que fuit le Common Ley del Iriſhrie devant le Conqueſt, ſoit aboliſh per eſtabliſhm̃t del Common Ley Dengleterre, que fuit juſtment fait ſolonque la Ley del nations, nient obſtant que ceo fuit un Chriſtian Kingdome, come appiert en Calvins Caſe en le 7. part de les Reports de le Seignior Coke 17. b. uncore les particular Cuſtomes poẽt eſtoier, come le Cuſtome de Gavelkinde in Kent, & auters Cuſtomes en auter particular lieus en Engleterre remainont apres le Norman Conqueſt.

3. Poet eſtre collect per le Judgement de Parliament 12 Elizabeth. cap. 5. que ceſt Cuſtome de Taniſtry ne fuit toll per le Common Ley, pur ceo que per ceſt Act, The pretended Lords, Gentlemen and Freeholders of the Iriſhrie, and degenerated

rated men of Engliſh name, holding their land by Iriſh Cuſtome, ont per ceſt Act power de ſurrender lour tres al Roigñ, & de prender eſtates per Letters patents, queux ſerront bon & effectual en la Ley enders touts perſons, forſque ceux que ont eſtate, title ou droit al dits terres p le due courſe del Common Ley.

2. QUant al ſecond Point, fuit object que le don en taile, le remainder al droit heires del donor, nad deſtroy ceſt Cuſtome, pur 2 Reaſons.

1. Pur ceo que ceſty que ad terre de tenure & nature del Taniſtry, nad tiel eſtate que il poet alien la terre en perpetuitie, mes ſolement pur ſon vie; & ſon eſtate eſt qualifie cõe le eſtate del Parſon ou Prebend, iſſint que le Fee-ſimple eſt en Abeiance.

2. Pur ceo que ceſt Cuſtome eſt enherent en la terre, & courge ove la terre, & ne poet eſtre extinguiſh per aſcun alienation, mes continue en quecunque maines, cibien en poſſeſſion del Roy que del ſubject: come Cuſtomes de Borough Engliſh & Gavelkind. Car ſi terre en Borough Engliſh ſoit done en taile, le puiſne fits avera formedone. 11 Ed. 3. Fitz. Formedone 30. 32 Ed. 3. Fitz. Age 81. 2 Eliz. 176. b. Et ſi terre en Gavelkinde ſoit done en taile, le Remainder al droit heirs del donor, come noſtre Caſe eſt, cibien le Remainder que le poſſeſſion irra al heires per le Cuſtome, & nemy al heires per le Common Ley. 26 H. 8. 4. b. 6 Ed. 6. Dier 72. b. Et coment que ſoit tenus 37 H. 8. Brooke Done & Rem. 42. que ſi terre en Gavelkind ſoit leaſe pur vie, Remainder al droit heires de J. S. ſi J. S. ad 4 fitz & debie, que le Remainder irra al eigne, car il eſt droit heire, & ceo eſt noſme del purchaſe; uncore ceo differ de noſtre Caſe, car le Remainder limitt al droit heires del donor neſt forſque reverſion, & le heire avera ceo per diſcent. Et que le poſſeſſion del Roy ne extinguiſh tiel Cuſtome, vide 8 Henr. 7. 10. 21 Edw. 3. 46. 14 Henr. 4. 2, 3.

3. QUant al tierce Point fuit object, que Conoghor O callaghan, le barraine Taniſt, ad gaine bon eſtate per le Grant de la Roigne Elizabeth. Car admitt que ceſtuy que tient terres per le Cuſtome de Taniſtry nad aſcun

tun eſtate per le Common Ley que il poet ſurrender, uncore le Act del Parliament 12 Eliz. cap. 5. enable luy ỏ ſurrender, & authoriſe le Seignior Deputy & Councill de faire Warrants al Chauncellor, de paſſer Letters patents al tiel pretended Seigniour ou Freeholder del Irilherie; & ceo eſteant fait, eſt ouſter enact, que tiels Letters patents ſerront bon & effectuall en la Ley, accordaunt al tenor & effect de meſme les Letters patents, envers touts perſons forſque ceux que ont droit al dits terres per le due courſe de la Common Ley. Donque le Graunt fait al Conoghor, eſteant donques pretended Seigniour del Poblicallaghan, ſerroit bon & effectuall, coment que il ne ſurrender bon eſtate al Common Ley. Car le Surrender neſt que ceremony preſcribed per le Act deſtre fait per le Irilhry, al fine que ſerront eſtop en apres de claimer lour Irilh Chieferies & exactions, ou auter title forſque deſouth les Letters patents. Mes le finall purpoſe de ſeſors del Act fuit a ſettle touts les poſſeſſions de ceſt Realme en le courſe del Common Ley.

Auxi cẽ Grant ſerr̃ bon verſus le def. que derive ſon eſtate del Eleanor, que fuit le droit heire del Donogh mac Teige le donor; car ſi le cuſtom̃ continue come ils ont argue, el ne fuit enheritable, & iſſint nad alcun eſtate p le courſe ỏl Common Ley.

MEs dauter part fuit reſpond p le Counſell del Defendant, & reſolve per le Court, que le dit Cuſtome del Taniſtrie fuit voide en luy meſme & aboliſh quaunt la Common Ley Dengleterre fuit eſtablish. Mes admitt que le Cuſtome ad eſtre bon, uncore le conveiante de la terre accordant al courſe bon del Common Ley, ad deſtroy ceſt Cuſtome in ceſt terre a touts jours. Et que le dit Conoghor O callaghan ad gaine nul eſtate per les Letters patents dat. 37. de la Roigne Eliz. come ceo Graunt eſt trove en le ſpecial verdict.

ET put le primer Point, touchant le Cuſtome, fuit primerment dit, que Cuſtome, in lentendment del Ley, eſt tiel uſage que ad obtaine vim legis, & eſt revera un binding Ley al tiel particular lieu, perſons & choſes que

ceo

ceo concern: & tiel Cuſtome ne poet eſtre eſtabliſh per grant del Roy, 49 Ed. 3. 3. a. ne p Act de Parliament. Mes eſt jus non ſcriptum, & fait per le people tantum de tiel lieu ou le Cuſtome curge. Car lou le people trove aſcun act deſtre bon & beneficial, & apt & agreeable a lour nature & diſpoſition, ils uſont & practiſont ceo de temps en temps; & iſſint per frequent iteration & multiplication de ceſt act, Cuſtome eſt fait; & eſteant uſe de temps dont memorie ne court, obtaine le force de un Ley. Et iſſint le Rule 44 Ed. 3. 19. eſt vray, que nul Ley oblige le people forſque ceo que eſt fait per conſent del people. Car conſent poet eſtre expreſſe tibien facto que verbo; & ceo que eſt expreſſe facto eſt plus fort que ceo que eſt expreſſe verbo; & ceo que eſt expreſſe per pluſors acts, & continual acts de meſme le kind, eſt Cuſtome. Et iſſint briefement, Cuſtome eſt un reaſonable act, iterated, multiplied & continued per le people, de temps dont memory ne court. Et ceo eſt le definition de Cuſtome, que ad le vertue & force del Ley.

2. Secondment fuit dit, que tiel Cuſtome doet aver 4 unſeparable properties: 1. doet aver reaſonable commencement; 2. doet eſtre certeine, & nemy ambiguous; 3. doet aver continuance ſans interruption, de temps dõt memory ne court; 4. doet eſtre ſubmit al Prerogative del Roy, & nient exalt encounter ceo.

1. Le commencement del Cuſtome (car cheſcun Cuſtome ad un commencement, coũt que le memorie del home ne extend a ceo; come le River Nilus ad un fountaine, coment que les Geographers ne poent trober ceo) doet eſtre ſur reaſonable ground & cauſe. Car ſi fuit unreaſonable en le originall, nul uſage ou continuance poet faire ceo bon. Quod ab initio non valuit, tractu temporis non convaleſcet.

Mes pur diſtinguiſher que eſt unreaſonable Cuſtome, & que nemy, ceux differences fueront miſe. Cheſcun Cuſtome neſt unreaſonable que eſt contrarie al particular Rule ou Maxime del poſitive Ley: Car Conſuetudo ex certa cauſa rationabili uſitata privat communem legem, Litt. 37. b. Come les Cuſtomes de Gavelkind & Borough-Engliſh ſont encounter le Maxime de Deſcent de inheritance, 35 Hen. 6. 26. a. & le Cuſtome de Kent, The father to the Bough, the ſon to the Plough, eſt encounter le Maxime des Eſcheats; que

& que leſſée en taile entra, nient obſtant le feoffemẽt de ſon pere ove garranty, eſt encounter le Maxime de Diſcontinuance. Et iſſint pluſors auters Cuſtomes, queux ſont contrary al particular Rules del Ley, ſont uncore tenus & adjudge reaſonable; car poent aver reaſonable commencement, lou ne ſont prejudiciall al Commonweale, ne al preſent intereſt del aſcun particular perſon.

Uncore Cuſtome poet eſtre prejudicial al intereſt de particular perſon, & reaſonable auxy, lou eſt p̄ le benefit del Cõmonweale in general. Come Cuſtome de faire Bulwarkes ſur tre de un auk p̄ le defence del Realme, 36 H. 8. Dier 60. b. & de razer meaſons in publico incendio, 29 H. 8. Dier 36. b. Iſſint de turner le plow ſur le headland de un auter, en favour de huſbandry; & de dzier nets ſur terre de un auter, en favour de fiſhing & maintenance de navigation, 8 E. 4. 18. 21 E. 4. 28. Mes Cuſtome q̄ eſt contrary al publike bien, q̄ eſt le ſcope & generall end de touts Leyes, (Salus populi ſuprema lex) ou injurious & prejudicial al multitude, & beneficial tantum al aſcun particular perſon, tiel Cuſtome eſt repugnãt al Ley de reaſon, que eſt deſuis touts poſitive Leyes; & p̄ ceo ne poet aver reaſonable ou loyall commencement, mes eſt voyde ab initio, & nul preſcription de temps poet faire ceo bon.

Et pur ceo pluſors Cuſtomes queux ount eſtre adjudge void en noſtre livres, come eſteant unreaſonable, encounter common droit, ou purement encounter Ley, ſi lour nature & quality ſont conſider, ſerront trove injurious al multitude, & prejudicial al Commonwealth, & de aver lour commencement (pur le plus part) per oppreſſion & extortion des Seigniors & graund homes. 2 Henr. 4. 24. En Replevin le defendant avow que la terr̄ ou, &c. eſt un prer, ou le Plaintife doet aver common apres le fein ſanche: mes que eſt tiel Cuſtome deins le Mannor, que nul commoner mettera eins ſes avers tanque le Seignior ad miſt eins ſes avers. Et Markham dit, ceo eſt marvellous cuſtome; car ſi le Seignior ne voet unques metter eins ſes avers, les commoners perdzont lour common. Ceſt Cuſtome la fuit adjudge voide, pur ceo que ceo fuit injurious al multitude de commoners, & beneficiall tantum al Seignior de la vill. Iſſint per Littleton fol. 46. Cuſtome que le Seignior avera fine de

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ſon franketenant p̄ marriage de ſa file, eſt tenus void: & Cuſtome que le Seignior del mannor detainera diſtreſſe prīs ſur les demeaſnes, tanque fine ſoit fait a luy p̄ le damage a ſa volunt, eſt auxy void. Jūint 3 Eliz. Dier 199. b. Cuſtome que le Seignior prendra p̄ barriot le beaſt de eſtranger levant & couchant ſur la terre de tenant: & 21 H. 4. Cuſtome que le Seignior del mannor avera 3 l. pur poundbreach de cheſcun eſtranger: & 21 H. 7. 20. Cuſtome que tenant ſerra amerce ſil ne miſt les avers en le pound del Seignior. Touts ceux Cuſtomes, coment que ſont beneficial al Seigniors en particular, uncore, pur ceo que ſont prejudiciall al multitude de ſubjects, ou al Commonwealth en generall, & commenteont per tort & uſurpation, & nemy p̄ voluntary conſent del people, pur ceo ſont adjudge unreaſonable & void en Ley.

2. Cuſtome doet eſtre certaine. Car incerta pro nullis habentur. Et conſuetudo ex certa cauſa rationabili uſitata privat communem legem. La 3 des eſſentiall qualities de bon Cuſtome ſont exprelle, viz. Certaintie, Reaſonableneſſe, & Uſage ou Continuance. 13 Edw. 3. Fitz. Dum fuit infra ætatem 3. Briefe de Dum fuit infra ætatem fuit port vers enfant; le tenant pleade Cuſtome, que quaunt enfant eſt de tiel age que il poet counter 12 d. ou meaſure un Alne de Draps, que ſon feoffement ſerra bon. Ceſt Cuſtome eſt adjudge void p̄ le incertaintie. 14 Edw. 3. Fitz. Barr. 277. En treſpas des arbres emportes, le def. pleade Cuſtome, q̄ teſty des tenants del mannor que prīmes vient al lieu ou, &c. avera touts windfals la. Ceſt Cuſtome eſt voyd auxy pur le incertainty. Et le reaſon alleage la eſt, q̄ ceo ne giſt in preſcription que giſt en volunt del home, car la volunt del home eſt incertaine. 42 Edw. 3. 46. en Rep. port per Priorels de Shaſton, le def. avow come Bailife al Viſcount de Dorſet, q̄ preſcribe de tener ſon turne en le lieu ou, &c. & de aver de tertenant demy mark, ou cheval, come un reward al cheſcun turne. Ceſt preſcription eſt tenus void p̄ le incertainty. Car eſt auxy dit la, que ceo giſt en le volunt del donor, que eſt incertaine.

Et ouſter ceo 2 reaſons fueront miſe pur que uncertain Cuſtome ſerroit void: 1. p̄ ceo que uncertaine choſe ne poet eſtre continue de temps dont memory ne cour ſans

interruption; 2. pur ceo que home ne poet preſcriber en choſe que ne puiſſoit al commencement eſtre bien graunt, 13 Henr. 7. 16. b. mes uncertain choſe ne puiſſoit unques eſtre bien graunt, & pur ceo preſcription de uncertain choſe eſt void auxy.

3. Cuſtome doet aver Continuance ſans interruption de temps dont memoxy ne court, &c. Car ſi ſoit diſcontinue deins temps de memoxy, le Cuſtome eſt ale: come ſi Copyhold ſoit leſſe pur le Seignior del mannox pur vie ou pur ans, accoxdant al courſe de Common Ley, ne ſerra jamais demiſe come Copihold accoxdant al Cuſtome apxes. 28 H. 8. Dier 30. b. Conſuetudo ſemel reprobata non poteſt amplius induci. Car ſicome Continuance fait Cuſtome, Diſcontinuance deſtroy ceo. Nihil tam conveniens eſt naturali æquitati, quam unumquodque diſſolvi eo ligamine quo ligatum eſt.

4. Cuſtome que ſe exalt ſur le Prerogative del Roy. ceo eſt void auxy envers le Roy. Car preſcription de temps fait Cuſtome, mes nullum tempus occurrit Regi. 49 Ed. 3. 3. en le Caſe de Whit Tawers, le Cuſtome de London & fait Coxpoxations eſt tenus void: Car le Roy ſoleint poet ceo fair & ſon Prerogative. 35 H. 6. 26. a. Cuſtome de London de retainer biens miſe in moxtgage tantque ſatisfaction ſoit fait del money ſur eux apxompt, ne extend al Jewels del Roy. Et ſi home ad Toll, ou Wreck, ou Stray, & preſcription, ceo ne extend al biens del Roy. Iſſint preſcription de aver ſanctuary pur Treaſon, ou & aver Catalla felonum, &c. eſt void vers le Roy, pur ceo q̃ tiel priviledge exaltat ſe in Prærogativam Regis, 1 Hen. 7. 23. b.

PEr ceux rules & Cuſtomes en generall, et particular 1. Cuſtome & Taniſtry fuit examine. Et primerint fuit reſolve, que et Cuſtome fuit unreaſonable, & void ab initio. Car eſt incounter le Commonwealth, & da in deſtruction de ceo tout ouſterint. Car Commonwealth ne poet eſtoier ſans certaine ownerſhip de terre, ou ſi le droit de enheritance de les terres ne reſt en nulluy.

Car ſi homes naboent tiel eſtate en lour terres, que lour iſſues ou prochein coſins de lour ſang poent enherit, iſſint que ils ſcaboent en certaine pur quel perſon ils tra-

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bailont & defraudont lour ames de pleasure, come Solomon dit, ils ne voilent unques improver lour terre a le melieur use & profit, ne edifier measons de alcun value, ne doner civil education a lour infants, mes aiant respect al present temps tantsolement, serront tout ousterment careleſſe de lour posterity. Et ceo est le veray cause del Barbarisme & desolation que suit en touts les Irish countries ou cē Custome de Tanistry suit en use.

Auxy ceo ad estre graund cause de les continuall Felonies & Treasons commit per les Irish en temps paravant. Car quant ils scavoent que lour femes ne serront endowes, ne lour issues enheritable de lour terres, ils committont tiels crimes ove greinder audacity: car pur affection a lour femes & enfants, homes plus esthuoent a faire alcun felonies, come Litt' dit 196. b.

Pur que cē Custome, que lessa lenheritance destre en Abeiance, & le fræhold auxy, apres le mort de chescun tenant, est unreasonable, & va en destruction del Commonwealth. Et p̄ ceo nostre Ley, (que est le melior Ley de mounde p̄ fair & preserver un Commonwealth) comit que ceo suffer le fæsimple en alcun case destre en abeiance pur un peu de temps, uncore ne voet unques suffer le fræhold destre en suspens, mes abhorre le suspension de fræhold, come natura abhorret vacuum. Et pur cest reason, si leas pur ans soit fait, le remainder al droit heirs de I.S. le limitation de remainder est void. Et si tenant del Roy morust sans heire, ou si donæ del Roy en taile morust sans issue, la terre immediatmēt est en possession del Roy sans office, pur avoider cest absurdity, 9 Hen. 7. 2. b. Et pur cest reason, 6 Edw. 6. Dier 71. terre ne poet estre appendant al office p̄ vie, mes al office de inheritance tantum: car si serroit appendant al office p̄ vie, ensueroit graund inconvenience, come est la dit, viz. le franktenemēt serroit en suspens apres le mort del officer, tantque novel officer soit fait ou create, si le office ne discend al un heire, ou al un home que ad perpetuall succession per la Common Ley. Et ceo est le plus apt case en la Ley destre resemble al case en question. Car per le Custome de Tanistry, le plus eigne & plus digne home ne vient eins come heire, (car heir est touts foits le plus procheine de sang) mez

come un ſucceſſour : uncore pur ceo que neſt encorporate per la Common Ley, come un Parſon ou Prebend, 40 Edward. 3. 27. ne vient eins en courſe de perpetuall ſucceſſion, mes come officer pur vie tantum, & per election : mes tanque election fait, le franktenement del terre fuit en ſuſpens, & le fee-ſimple & inheritance fuit touts foits en Abeiance ; & iſſint fuit nul fee-ſimple in actu al alcun temps, contrary al principle del Common Ley, que de cheſcun terre il y ad fee-ſimple, Litt. 144. b.

2. Ceſt Cuſtome eſt auxy unreaſonable p̄ auter reaſon, viz. p̄ ceo que ceſt Cuſtome, (come eſt trove p̄ le ſpeciall verdict) q̄ la terre deſcendra ſeniori & digniſſimo viro, &c. appiert plainement de aver commencement per le uſurpation & tyrāny de ceux que fueront plus potent enter eux. Come pluſors Cuſtomes, dont mention eſt fait devant, adjudge en noſtre livres deſtre void en Ley, commenceont p̄ oppreſſion & extortion de Seigniors. Car le antient Brehon Ley fuit, que tiel terre irroit al plus eigne del Sept, que fuit le veray Taniſt, & appel en Latine Secundus, eſteant ſucceſſor apparant : mes pur ceo que le pluis eigne ne fuit touts foits le plus active, ou ne avoit le greinder number des followers, un auter plus powerfull perſon per faction & fort main intrudoit ſur le pluis eigne, & procuroit luy meſme deſtre elect, come eſteant pluis digne. Et com̄t que cē Cuſtome ad eſtre uſe de temps dont memorie ne court, viz. de eſlier un tiel que ſoit pluis digne en le opinion del people ; uncore ceo fuit malveyes en le commencement, & malveyes en le continuance, car fuit la cauſe de grand effuſion de ſang & mults auters miſchieſes.

3. Auxy le negative part de ceſt Cuſtome eſt unreaſonable, que tout ouſterment exclude les files de enheriter eſtat de fee-ſimple. Car le Taniſt, ſil ad alcun eſtate de enheritance, ad fee-ſimple, car nad alcun particular eſtate en taile limit a luy & les heires males de ſon corps : & eſt encounter le nature de fee-ſimple de excluder le heire female, ſi le heire male faile. Et pur ceo ſi feoffement ſoit fait al I. S. & les heires, proviſo que les files ne enheriteront, ceo eſt voide proviſo. Et ſi terre ſoit done al I. S. & les heires males, il ad fee-ſimple, & le heire female enheritera en default del

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heire male. Et ceo fuit adjudge en Parliament en le Caſe d Multon, viz. q̄ en tiel caſe ſes Soers enheriteront. 18 Aſſ. p. 5. 27 H. 8. 27. a. 9 H. 6. 22. Litt' fol. 6. b.

Et pur ceo per le Statute de Rutland, 12 Edw. 1. que eſtabliſh le Common Ley en North Gales, ou le veray Iriſh cuſtome de Gavelkind fuit donques uſe, per quel Cuſtome le Baſtard enheritoit ove le legitimate, & les females fueront tout ouſterment exclude de enheriter, come en ceſt caſe icy, fuit ordeine, Quod hæreditates remaneant partibiles inter hæredes maſculos, ſicut eſſe conſueverunt, & fiat partitio ſicut fieri conſuevit, hoc excepto, quod Baſtardi de cætero non habeant hæreditates, nec habeant propartes cum legitimis nec ſine legitimis. Et ſi forte hæreditas aliqua extunc, pro defectu hæredis maſculi, deſcendat ad legitimas mulieres, hæredes ultimi anteceſſoris ſui inde ſeiſiti, volumus de gratia noſtra ſpeciali, quod mulieres legitimæ habeant propartes ſuas inde ſibi in Curia noſtra aſſignandas, licet hoc ſit contra conſuetudinem Wallenſicam ante uſitatam. Et ceſt Ordinance accord ove le Divine Ordinance en le Caſe de Zelophehad, Num. cap. 27.

2. SEcondment fuit reſolve, que ceſt Cuſtome fuit voyd pur le Incertainty. Car ou per ceſt Cuſtome la terre deſcendroit ſeniori & digniſſimo viro ſanguinis & cognominis de ceſty que morust ſeiſie, 1. le Perſon eſt uncertaine, 2. le Eſtate eſt uncertaine.

1. Pur le Perſon a que la terre deſcendroit, coment que ſeniori ſoit noſme aſſets certaine de prender eſtate: 26 Eliz. Dier 337. a. W. Humfreſton conbey terre al uſe de ſa feme pur vie, le Remainder ſeniori puero de corpore ipſius W. legitime procreato, ceſt limitation de eſtate fuit aſſets certaine & bon. Car ſenioryty conſiſt en prioryty de temps; & les diſtinctions & periods de temps ſecundum prius & poſterius ſont certaine, & poent eſtre bien prove & trie. Et pur ceo le Seignior per prioryty (quant al gard del corps del heire) ſerra preferre devant le Seignior per poſterioryty, 11 Hen. 4. 18. 21 Ed. 3. 11. Stat' de W. 2. cap. 16. Et ſi leas pur vie ſoit fait, le remainder al ceſty que primes viendra al Powles, le remainder eſt bon, 12 H. 7. 28. Iſſint 14 E. 3. Fitz. Barr. 177. Cuſtome que le tenaunt que primes vien-

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dra al Bois avera les windfals, est bon, car le temps de primer bener poet estre bien trie; ou si limitation fuissoit al pluis procheine de sang, ceo ad estre assets certaine. 30 Ass. p. 47.

Mes cest parol dignissimo est cy uncertaine, que ne poet estre reduce al certaintie per alcun triall ou proofe. Car le dignitie de tiel home gist en le opinion de multitude, que est le pluis incertaine chose de mounde.

Scinditur incertum studia in contraria vulgus.

Issint que alcuns dirront que le plus docte & scavant home est le plus digne, alcuns que le plus valiant home, alcuns que le plus riche home, alcuns que le plus liberall home. Et issint le multitude ne puissoit unques agreer, & pur ceo le plus potent home fuit touts foits preferr, q̃ est contrarie al touts Leyes.

Inde datæ leges, ne fortior omnia posset.

Mes si serroit referre al Judgement de pluis sage home que fuit unques, de judger que est le pluis digne home deins alcun pais, il prendroit bien long temps de advisement en cest case.

Mes fuit dit, que la Ley doet judger de plus digne, & adjudgera le plus eigne destre le plus digne. Certes en cases de descent de enheritance la Ley respect le primogeniture, birthright, & le proximitie & entiertie de sang; mes ne done alcun regard al worthiness & sufficiencie del heire. Et pur ceo la Ley ject enheritance cybien sur Ideott ou Enfant, come sur home de discretion. Pur que cest difference est prise en Sir Henry Nevils Case, Plow. Comment. 379. b. que un Officer pur vie ne poet assigne ouster son office, sans speciall parolx en le graunt, car la Ley entend luy destre un officer de trust, & chosen pur son science & diligence, viz. pur son worthinesse. Mes officer de enheritance poet graunt ouster son office, car la Ley ne entend que le Graunt fuit fait sur confidence del sufficiencie del officer, car poet descend al Feme, al Enfant, ou al Ideot. Et pur ceo la Ley ne respect dignitie de person en case de

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deſcent del enheritance. Car coment que primogeniture, ayant un prerogative done a ceo per la Ley de Dieu, ſoit preferre auxy en noſtre Ley, & iſſint le plus eigne ſoit en aſcun lenke le plus digne: uncore per ceſt Cuſtome la dignitie eſt entend deſtre un auter quality que ſeignioxity. viz. un auter vertue ou merit en le perſon que doet concurre ove le ſeignioxitie. Car auterment le parol Seignioxie ad eſtre ſufficient, & le parol digniſſimo ad eſtre idle: p ceo le perſon neſt plus certain en ceſt Caſe que en le Caſe 11 Edw. 4. 1. b. ou don eſt fait al un des enfants de I. S. ou 11 Henr. 7. 13. ou graunt eſt fait IS ou IN, ou 1 Mar. Dier 91. a. ou graunt eſt fait de tant des arbres que poent reaſonablement eſtre ſpare. Et pluſors Caſes de uncertaine graunts fueront mile: & fuit conclude, que tiel Graunt ſeniori & digniſſimo ſerroit voide, & pur ceo tiel limitation per preſcription eſt void auxy, ſolonque le Rule priſe 13 Hen. 7. 16. b.

2. Le Eſtate eſt uncertaine. Car cheſcun que ad eſtate de enheritance, ad ceo ou en naturall capacitie, ou en politique capacitie. Mes Taniſt ne ad eſtate de enheritance en ſon naturall capacitie, pur ceo que le plus eigne & plus digne neſt pas heire. Car le plus digne dient eins per election, & donques neſt heire; car Deus ſolus hæredem facere poteſt, non homo, Bracton 62. & neſt trove que la terre deſcendxait ſeniori & digniſſimo ut hæredi. Mes en Gavelkind touts les fits ſont appell heires, libr. Intrac. 143. a. ou le Cuſtome eſt pleade en ceſt manner, viz. Quod terræ & tenementa de tenura & natura de Gavelkind ſunt de tempore, &c. inter hæredes maſculos partita & partibilia, & deſcendere debent dict. A. B. C. ut filiis & hæredibus, &c. Iſſint le puiſne fits en Burrough Engliſh eſt touts foits noſme heire.

Auxy le Taniſt ne ad enheritance p ſucceſſion en politique capacitie, p ceo q neſt encorporate p le Common Ley, come Parſon ou Prebend, &c. Et fil ne ad forſque eſtate p vie, ceo ne poet diſcender. Et iſſint il ad nul eſtate de enheritance de q la Ley poet prender notice, & p conſequence le incertainty d ſon eſtate fait ceo void en Ley.

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3. TIercement fuit reſolve, que ceſt Cuſtome fuit interrupt & deſtroy en ceſt terre quant Donogh mac Teige execute eſtate taile de ceo ſolonque le courſe del Common Ley. Car eſt difference ou Cuſtome courge obe le Seigniozy, & ou ceo courge obe le Tenancy. Car ou Cuſtome courge obe le Tenancy ne ſerra deſtroy per conbeiance ſecundum curſum communis legis: come ſi fine ſoit lebie de terre tenus en Gabelkind, coment que ſoit un quære, 6 Ed. 6. Dier 72. 6. ſi le courſe de enheritance ſoit alter, & fait deſcendable al heire al Common Ley, uncoze fuit agrée per le Court icy q̄ le Cuſtome ne fuit alter. Et iſſint fuit tenus de terre en Bozough Engliſh, 2 Eliz. Dier 179. b.

Mes ceſt terre en queſtion eſt parcel des Demeſnes del Chieſetaine ou Seignioz del Poblicallaghan. (Car les terres queux baont obe les Chiefries tantſoleñt ſont de tenure & nature de Taniſtry.) Et pur ceo eſt ſemble al copihold ere, que eſt parcel des demeſnes del Seignioz; & ſi le Seignioz execute eſtate de ceo accozdant al courſe del Common Ley, le Cuſtome eſt ale a touts jours. Iſſint eſt del homage anceſtrell, que eſt per preſcription, & continuance de Seigniozy en ſang del Seignioz, & del tenancy en ſang del tenant; q̄ un alienation ſolement le homage anceſtrell eſt ale, & le garrãty eſt deſtroy, & repziſall de meſme leſtate ne jammes reduterã ceo, Litt' 33. b.

Auxy ceſt Cuſtome de Taniſtry neſt enherent en la terre, come le Cuſtome de Gavelkind ou Bozough Engliſh, mes eſt pluſtoſt un perſonall Cuſtome, q̄ va obe perſon ō pluis eigne & pluis digne; & pur ceo quant la terre eſt un foits conbey al auter perſon, viz. al heire al Common Ley, ceſt Cuſtom eſt anient a touts jours.

4. DArraignement, ceſt Cuſtome de Taniſtry ſerroit void enbers le Roy, come eſteant prejudiciall al profit & Prerogative del Roy. Car ou touts terres ſont tenus mediatement ou immediatement del Roy, per ceſt Cuſtome le Roy perdzoit tout le benefit de ſon Seigniourie paramount en ceſt terre, que fuit quaſi in manu mortua, dont le Roy ne puiſſoit unques aber ne wardſhip, ne eſcheate, ne alcun manner de ſervice teſtifiant que il fuit

Seignioz

Seignior de la terre. Et Litt' 31. a. dit, que ſerroit inconvenient, & encounter reaſon, que aſcun ſerra tenaunt al auter de eſtate de enheritance, & uncore le Seignior avera nul manner de ſervice de luy. Et pur ceſt reaſon, le Cuſtome de Kent, The father to the bough, the ſon to the plough, extend forſque al felony, & toll le eſcheat de common perſon ſolement; mes ne extend al Treaſon, ou le Roy avera le eſcheate, 22 Edw. 3. Fitz. Præſcr. 40. Iſſint preſcription de aver ſanctuary pur Treaſon eſt voide, 1 Henr. 7. 23. Et pur ceo coment que tiel Taniſt navoit eſtate de enheritance per le Cuſtome; uncore fil ad eſtre attaint de Treaſon, le courſe de Eſchequer icy ad touts foits eſtre, de ſeiſer la tre come forfeit ou eſcheate al Corone, nient obſtant ceſt Cuſtome de Taniſtry.

MEs admit que cē Cuſtome nad eſtre void en luy meſme; uncore le Introduction & eſtabliſhment del Common Ley Dengleterre ad aboliſh ceo. Car ceſt Cuſtome de Taniſtry fuit le common Cuſtome del terre de Ireland devant le Conqueſt, & generalment uſe en touts les Iriſh countries, en mn le nature & forme come eſt trove icy. Et pur ceo covient de neceſſity eſtre aboliſh per le eſtabliſhment de un auter general Ley en meſme le point.

Mes p̄ le Introduction del Common Ley Dengleterre en ceſt Realme de Ireland, eſt aſcavoir, que ſicome ceſt Iland ne fuit pleinemēt conquer & reduce al ſubjection de la Corone Dengleterre tout al un temps, mes per parcels & en ſeveral ages; iſſint la Common Ley Dengleēre ne fuit communicate a touts les inhabitants ſimul & ſemel, mes de temps en temps, & al ſpeciall perſons & families del Iriſhrie, a queux le Roy fuit pleaſe de graunter le benefit & protection de ſes Leys.

Car coment que le Ordinance per que la Common Ley Dengleterre fuit eſtabliſh en Ireland fuit general, come eſt trove in Archivis Turris London, 30 H. 3. patent' Membr' 3. en cē forme, Quia pro communi utilitate terræ Hiberniæ, & pro unitate terrarum, (note cē parol de Union) proviſum eſt quod omnes Leges & Conſuetudines quæ in Regno Angliæ tenentur, in Hibernia teneantur, & eadem Terra iiſdem Legibus ſubjaceat, & per eaſdem regatur, ſicut Johannes Rex, cum

illic eſſet, ſtatuit & firmiter mandavit; ideo volumus, quod omnia brevia de Communi Jure quæ currunt in Anglia, ſimiliter currant in Hibernia ſub novo Sigillo noſtro, &c. in cujus rei, &c. Teſte me ipſo apud Woodſtock, &c. Coment que cē Ordinance ou Briefe del Roy ſoit generall, uncore eſt manifeſt per touts les auntient Records de ceſt Realme, que la Common Ley Dengleterre fuit ſolement miſe en execution en ceſt part de Ireland que fuit reduce & divide en Counties, & poſſeſſe per les Engliſh Colonies, & nemy en les Iriſh countries ou territories que ne fueront reduce en Counties juſques al temps de Q. Mary & Q. Elizabeth, & uncore fueront en extent de terre plus que 2 third parts de ceſt Iland.

Car le Roy John ſeſoit ſoyſque 12 Counties en Leimſter & Munſter, viz. Dublin, Meth, Uriel, Kildare, Caterlaugh, Kilkenny, Wexford, Waterford, Corke, Kerry, Limeric, Tipperary. Mes les auters Provinces & territories de ceſt Realme, que ſont ore divide en 21 Counties alarge, eſteant donques enhabit. p̄ le plus part, per les meere Iriſh, fueront hors des limits de tout Shire-ground, pur le ſpace de 300 ans apres le ſeſans de les primer 12 Counties.

Et pur ceo fuit impoſſible que la Common Ley Dengleterre puiſſoit eſtre execute en ceux countries ou territories. Car la Ley ne poet eſtre miſe en execution ou Breve Domini Regis non currit; & le briefe del Roy ne poet courger mes ou eſt Count & Vicount, ou auters miniſters de la Ley, de ſerver & returner les Briefes del Roy.

Et pur ceſt cauſe appiert per les antient Records, que les meere Iriſh fueront hors del protection del Roy. Car Litt' dit fol. 43. b. que la Ley del Roy & les Briefes del Roy sōt choſes per queux home eſt protect & aid; & iſſint durant le temps que home eſt hors del protection del Roy il eſt hors deſtre ayde ou protect per la Ley del Roy, ou per le Briefe del Roy. Et que les meere Iriſh homes ne avoent le benefit de la Ley Dengleterre, ſans ſpeciall Charters del Roy de enabler eux, ceux Records enſuant, enter auters, fueront monſtre.

1. 2 Ed. 3. Clauſ. membr. 17. in Archivis Turr. London. Rex dilecto & fideli ſuo Johanni Darcy le Nevieu Juſtitiario ſuo Hiberniæ ſalutem. Ex parte quorundam hominum de Hiber-

nia

nia nobis extitit ſupplicatum, ut per Statutum inde faciendum concedere velimus, quod omnes Hibernici qui voluerint legibus utantur Anglicanis, ita quod neceſſe non habeant ſuper hoc Chartas aliquas à nobis impetrare. Nos igitur certiorari volentes, ſi ſine alieno præjudicio præmiſſis annuere valeamus, vobis mandamus, quod voluntatem Magnatum terræ illius, in proximo Parliamento noſtro ibidem tenendo, ſuper hoc cum diligentia perſcrutari faciatis, & de eo quod inde inveneritis, una cum veſtro conſilio & adviſamento, nos diſtincte & aperte cum celeritate qua poteſtis certificetis, hoc Breve noſtrum nobis remittentes, &c.

2. Inter communia placita, 28 Ed. 3. in Archivis caſtri Dublin. Simon Neal queritur de Willielmo Newlagh de placit' quare vi & armis apud Clandalkan in Comitatu Dublin. die Lunæ proxime poſt feſtum ſanctæ Margaretæ virginis, anno regni Regis nunc 28. Clauſum ipſius Simonis fregit, & herbam ſuam ibidem cum beſtiis ſuis, viz. afris, vitulis & bidentibus, conculcavit & conſumpſit, contra pacem, &c. Unde dicit quod deterioratus eſt & damnum habet ad valentiam 20 s. & inde producit ſectam, &c.

Et prædictus Willielmus modo venit, & dicit, quod prædictus Simon eſt Hibern', & non de Quinque ſanguinibus; & petit judicium, ſi ipſe ei reſpondere teneatur.

Et prædictus Simon dicit, quod ipſe eſt de Quinque ſanguinibus, viz. de les Dneales de Ultonia, qui per conceſſionem progenitorum Domini Regis libertatibus Anglicis gaudere debent, & utuntur, & pro liberis hominibus reputantur: & hoc offert verificare, &c.

Et prædictus Willielmus dicit, quod ipſe Simon eſt Hibern', & non eſt de les Dneales de Ultonia, nec de Quinq; ſanguinibus: & de hoc, &c. Ideo fiat inde jurata, &c.

Qui jurati dicunt ſuper ſacrament' ſuum, quod prædictus Simon eſt de Natione de les Dneales de Ultonia, & ſic eſt de Quinq; ſanguinibus, &c. Et aſſidunt damna ad ſex denarios. Ideo conſideratum eſt quod prædictus Simon recuperet verſus prædictum Willielmum damna ſua prædicta, & prædictus Willielmus committatur Gaolæ quouſque, &c.

Per ceſt Jugement appiert, que fueront cinque principall Septs ou Sangues del Iriſhrie enable per Graunt del Roy de aver le benefit del Ley D'Engleterres, & appiert

per un auter Record queux fueront les dits cinque Septs ou Sangues.

3. 3 E. 2. Inter placita coram domino Justitiario, &c. in Archiv. Turr. Bremingham in castro Dublin. Frater Philippus de Monsterworth & frater Richardus de Abbedley, Canonici de l' Anthony juxta Gloucester, Richardus Fox, & Willielmus de Stowell, attachiati fuerunt ad respondendum Willielmo O Kelly de placito, quare, cum dominus Rex cepisset in protectionem suam special' prædictum Willielmum O Kelly, homines, terras, res, redditus, & omnes possessiones suas, inhibens omnibus & singulis ne quis iis inferret, vel inferri permitteret, injuriam, &c. iidem Philippus, Richardus, Richardus & Gulielmus, in ipsum Willielmum O Kelly apud Duleek vi & armis insultum fecerunt, ac ipsum ibidem forstallaverunt, ceperunt, & imprisonaverunt, & alia enormia ei intulerunt, ad damnum, &c. & contra pacem & protectionem Domini Regis, &c.

Et prædictus Philippus, Richardus, Richardus & Willielm' ven. & defendunt vim & injuriam quando, &c. & dicunt quod non tenentur prædicto Willielmo ad hoc breve respondere, quia dicunt quod prædictus Willielmus O Kelly est Hibernicus, & non de sanguine aut progenie eorum qui gaudeant Lege Anglicana quoad brevia portanda, qui sunt *Oneal de Ultonia, O Conoghor de Connacia, O Brien de Thatmonia, O Molaghlin de Midia, & Mac Murghogh de Lagenia:* & petunt judicium, &c.

Et prædictus Willielmus O Kelly dicit, quod revera ipse est Hibernicus, sed de progenie de *Oneal de Ultonia*, habens ortum suum de sexu masculino ejusdem progeniei, & petit instanter judicium. Et prædicti Philippus, Richardus, Richardus & Willielmus dicunt, quod idem Willielmus O Kelly admitti non debet ad dicendum quod sit de prædicta progenie de *Oneal*, quia si esset de progenie illa, hoc appareret in ejus cognomine, quia tunc diceretur Willielmus *Oneal*, & non Willielmus O *Kelly*; & unde dicunt quod ipse non est de progenie de *Oneal*, &c. Et hoc parati sunt verificare, &c. Ideo inquiratur per patriam. Et præceptum est Vic. quod venire faciat coram, &c. à die Paschæ in 15 dies ubicunque, &c. duodecim, &c. qui nec, &c. per quos, &c. ad recognoscendum, &c: Idem dies datus est partibus prædictis, &c. Postea ad diem illum venerunt præd' Philippus, Richardus, Richardus & Willielmus,

mus; & prædictus Willielmus O Kelly, primo, ſecundo, tertio & quarto die ſolemniter vocatus non venit,&c.

Apres ceſt temps, viz. anno 40 Edw. 3. en le Parliament tenus al Kilkenny devant Lionell Duke de Clarence, fuit enact, que nul compaternity, nurture des enfants ou marriage ſoit fait enter les Anglois, ou auters eſteant a la peace del Roy, ove les Iriſh, ſur paine de vie & member. Et coment que per meſme le Eſtatute de Kilkenny le Brehon Ley, que fuit le Common Ley del Iriſhry, ſoit declare deſtre nul Ley, mes un leud Cuſtome; uncore ceo ne fuit tout ouſterñt abolish enter les Iriſh, mes tantſolement defend & phibite deſtre uſe enter ceux queux fueront de Engliſh race, & les Iriſh fueront leſſe alarge deſtre rule per lour barbarous Cuſtomes, come devant.

Et aps le ſelans de ceſt Statute de Kilkenny, en touts auters Statutes faits en temps del ſeverall Roys, juſques al temps de Hen. 8. ou aſcun mention eſt fait des Troubles & Guerres en ceſt Realme, les Englois ſont appell Rebels, & les Iriſh ſont appell Enemies.

Mes apres le Act de 33 Henr. 8. cap. 1. per que eſt recite, que coment que le Roy Dengleterre, per le noſme del Seignior de Ireland, avoit tout manner de Royall Power & Juriſdiction en ceſt Terre; uncore, pur ceo que il nad aſſume le noſme & ſtile del Roy, les Iriſh Inhabitants de ceſt Realme naboent eſtre cy obedient al Roy Dengleterre & ſes Leyes come de droit ils deboent eſtre: Pur que eſt enact, Que le Roy Henr. 8. ſes heires & ſucceſſours, ſerront a touts jours Roys de Ireland, & avoent le noſme, ſtyle & title de Roy de ceſt Terre, ove touts honors, prerogatives & dignities apperteinant al State & Majeſtie del Roy, come unite & annex al Imperiall Crowne Dengleterre, &c. Apres le ſelans de ceſt Act, le dit differente de Engliſh Rebells & Iriſh Enemies neſt deſtre trove de Record, mes touts les meer Iriſh fueront deboys-enavant accept & repute ſubjects & liege bomes a les Roys & Roynes Dengleterre, & avoent le benefit & protection de la Ley Dengleterre, quant ils voilent uſer ou demander ceo.

Et al entent que la Ley Dengleterre puiſſoit aver un free courſe in & p tout le Realme de Ireland, come eſt expreſſe

expresse en le Statut d 11 Eliz. cap. 9.) fuit prohibe en several Parliaments, viz. 3 & 4. Phil. & Mar. cap. 3. & 11 El. cap. 9. que Commissions serront agard & redue en Shires & Hundreds touts les Irish countries que ne fueront Shire-ground devant. Et accordant a ceo, en les several Governments de Thomas Counte d Sussex, Sir Henry Sidney, & Sir John Perrot, non solemt les Irish territories en les confines d Leimster, mes auxy les entier Provinces d Connaght & Ulster, estant hors d tout Shire-ground devant, fuerõt divide & distinguish en several Counties & hundreds; & several Viscounts, Coroners & Justices d Peace, & auts Officers & Ministers de la Ley Dengleterre, ont estre de temps en temps constitute en ceux Counties, per several Patents & Commissions desouth le grand Seale d Ireland: & per cest mean la Common Ley ad estre communicate a touts persons, & execute per tout cest Realme per plusors ans passées.

Darrainment, nostre Seignior le Roy que ore est, per un speciall Proclamation in Anno 3. de son reign, declare & publish, que il ad receive touts les natives de cest Realme en son royall protection, &c. Per que fuit clerement resolve, que la Common Ley Dengleterre est ore establish universalment per tout cest Realm de Ireland, & q touts persons & possessions deins cest Realm doent estre goverine per les rules de cest Ley, & que chescun subject inheritera son terre en Ireland per le just & honorable Ley Dengleterre, viz. en cest mãner & per mesme la Ley per q le Roy enherit la Coron de Ireland. Et per ceux degrés la Common Ley fuit introduce & establish en cest Realme.

Et quant al cest terre en question, ceo gist en le County de Corke, que est un des auntient Counties fait per le Roy John, & en que le Common Ley Dengleterre ad sa course pur le space de 150 ans al meines apres le Conquest. Per que, coment que per le incursion del Irishrie le course del Common Ley Dengleterre fuit interrupt & discontinue en cest Countie per un long space de temps, uncore l'execution del Common Ley esteant revive & restore, le Custome de Tanistrie, & touts auters Irish Customes nient agreeable al rules del Common Ley, sont anient & abolish, come ils fuerõt sur le prim introduction de la Ley Dengleterre en cest Coũty.

Et

Et coment q̃ cest Custome de Tanistry ad estre Custome de un particular lieu tantsolement; uncore, esteant repugnant a les Rules del Common Ley, serroit abolish per le introduction & establishmēt del Common Ley en cest Realme. Et nest semble al Case de Wales, Dier 21 Eliz. 363. b. ou particular Custome de Denbigh continue, nient obstant le Statute q̃ establish le Common Ley en Wales: car l'entēt d̄l fesors de cest Statute appiert d̄str̄, q̃ les Customs d̄ Wales agrēable al ascun customs d̄ Engleterr̄ serront p̄serve; car p̄ mesme le Statut est provide, q̃ Commission issera de examiner les Welch Customes, & que ceux que serront trove reasonable, sur Certificate des Commissioners serront allow.

Auxy cest Custome ne poit estre resemble al Custome de Gavelkind en Kent, que avoit continuanc̄ apres le Norman Conquest: car le Common Ley Denglett̄ ne fuit introduce p̄ le Conqueror, come ad est̄ observe & prove tresdoctm̄t per le Seignior Coke, in le Preface al tierce Part d̄ ses Reports.

FUit auxy resolve, que rien passe per le Grant de la Roigne Elizabeth fait al Conoghor O Callaghan, come ceo est trove p̄ le verdict: car le Graunt est fait en consideration d̄ son Surrender, & il ne claimoit eins mes come Tanist, q̃ ad nul estate dont la Common Ley prist notice; & issint son entry fuit forsque abatem̄t apres le mort del Donogh mac Teige le puisne, per q̃ le Graunt del Roigne fait en consideration de tiel estate surrendred est voyd en Ley. Barwicks Case, 5. part des Reports del Seignior Coke, 93. b. Le Case d̄l Alton Woods, 1. part des Reports del Seignior Coke, 43. b. 18 Eliz. Dier 252.

Et quant al Statut̄ de 12 Elizab. cap. 5. pur accepting Surrenders del Irish Seigniors, ceo ne fait le Graunt bon. Car cest Graunt ne fuit fait per force de cest Statut̄, ne accordant al forme p̄scribe en cest Statut̄. Car l' Statut̄ requir̄ divers necessary circumstances, queux fuer̄ omitt en le obtaining & passing de cest Graunt. Car, primerment, le pretended Irish Seignior doet offer de surrend̄: donques cest offer doet estre advertise al Roigne; & sur ceo la Roigne doet signifier sa pleasure al Deputy, ou auter

chiefe

chiefe Governor, per ſes Letters ou inſtructions deſouth ſa Signature, que le Surrender ſerra accept, & Grant fait al tiel pretended Seignior per Letters patents. Et ſur ceo, le Deputie & greinder part del Councell de ceſt Realme doent faire Warrant al Chancellor de accept le Surrender, & paſſer les Letters patents accordant a tiel Letter ou inſtructions. Ceux circumſtances ne ſont trove per le verdict deſtre obſerve en le paſſing de ceſt Grant, & p̄ ceo ne ſerra entend deſt̄ fait per force de ceſt Statut, & per conſequente ne ſerra fait bon & effectuall per ceo.

DArrainment, ou fuit object per un del Counſell obē le Plaintife, que la Roigne Eliz. ſerra dit en poſſeſſion de ceſt terre per vertue del primer Conqueſt de Ireland, envers Donogh mac Teige O Callaghan le feoffor, que ne puiſſoit deriver alcun title al ceſt terre de la Corone, & p̄ ceo ſon feoffement, per que le Defendant claime, fuit void, eſtoant fait per intrudor ſur le poſſeſſion de la Roigne: Fuit reſolve encounter ceſt objection, que la Roigne Eliz. ne ſerra dit en actuall poſſeſſion de ceſt terre per vertue del primer Conqueſt, ſi ne appiert per alcun Record que le primer Conqueror ad ſeiſe ceſt terre al temps del Conqueſt, & appropriate ceo particularment a luy meſme, come parcel de ſes proper demeſnes.

Car les Roys Dengleterre ont toutsfoits claime & eu deins lour Dominions un Monarchy Royall, & nemy un Monarchy Seigniorall, ou Tyranny. Et deſouth un Monarchy Royall les ſubjects ſont Frank-homes, & ont property en lour biens, & franktenement & inheritance en lour terres: mes deſouth un Monarchy Seigniorall, ou Tyranny, ils ſont touts come villeins ou eſclaves, & proprietors de rien forſque a volunt de lour grand Seignior ou Tyrant, come en Turkey & Moſcovy. Et p̄ ceo, quant tiel Monarch Royall, que voet goverher ſes ſubjects per un juſt & poſitive Ley, ad fait novell Conqueſt de un Realme, coment que ipſo facto il ad le Seigniory paramount de touts les terres deins tiel Realme, iſſint que touts les terres ſont tenus de luy mediate vel immediate, & il ad auſi le poſſeſſion de touts les terres queux il voet actualment ſeiſer & retainer en ſes proper maines, pur ſon profit ou pleaſure,

& poet

& poet auxy per ſes graunts diſtributer tiels poꝛtions que luy plerra a ſes ſerbiteurs & gens de guerre, ou al tiels colonies queux il boile planter immediatemẽt ſur le Conqueſt; come les auntient Romaines, ſur lour conqueſts, ont uſe de appꝛopꝛiate le ſeptieſme part del territoꝛy conquered, pur plantation de lour colonies, & les Vandals in Italy pꝛiſoent le tierce part: untoꝛe Sir James Ley Chiefe Juſtice diſoit, que ſi tiel Conquerour receibe aſcun de les natibes ou auntient enhabitants en ſon pꝛotection, & abow eux pur ſes ſubjects, & permit eux de continuer lour poſſeſſions, & demourir en ſon peace & allegeance, q̃ lour heirs ſerront adjudge eins per bon title, ſans grant ou confirmation del Conquerour, & enjoyeront lour terres ſolonque les rules de la Ley que le Conqueroꝛ ad allow ou eſtabliſh, ſilz boilent ſubmitter eux meſmes a la Ley que eſt allow ou eſtabliſh per le Conqueroꝛ, & tener lour t̃res accoꝛdãt al rules de ceo, & nẽy auterm̃t. Et ſur ceſt reaſon, ou William le Conquerour ad grant al Warren un Norman de pꝛincipall qualitie le Caſtle de Shirbourne in Norfolk, le heire de Shirbourne, le antient enheritoꝛ de ceſt Caſtle, monſtre al Conquerour, que il fuit ſon ſubject & liege home, & enheritoit le dit Caſtle per meſme la Ley que le Conquerour ad allow & eſtabliſh en Engleterre, & pur ceo pꝛia que il poet tener le dit Caſtle en peace: le Conquerour en ceſt caſe doſt Judgement pur Shirbourne encounter Warren. De quel Judgement Camden fait mention en le deſcription de Northfolk: & Calthrop Juſtice diſoit, que il ad bieu un authentique copy de ceſt Judgement en le Libꝛary de Sir Chriſtopher Heydon al Baconſthorp en Northfolk.

Car revera le Norman Conquerour, coment que il feloit plus abſolute & entire Conqueſt Dengleterre que Henr. 2. feloit de Ireland, uncoꝛe il ne ſeiſiſt tout, ne aboit le actual poſſeſſion de touts les terres deins le Realme Dengleterre beſt en luy per le Conqueſt; mes le contrarie appiert per le Libꝛe de Domeſday, que eſt exact deſcription de tout le Realme, fait en temps de ceſt Roy. Car per ceſt Recoꝛd eſt manifeſt, que le Conquerour aboit certaine terres en demeſne, viz. les terres queux fueront en la maine de Saint Edward, & ſont la entitle Terræ Edwardi

Regis, & auks tres queux il m̃ ad ſeiſe ſur le Conqſt, & ſont entitle Terræ Regis, ſans pluis, come ẽ note en 49 E. 3. 23. a. Et ceux tres ſont oze appel les antient demeſnes del Roy, ou les antient demeſnes de la Cozone Dengletre, F. N. B. 14. Mes en ceſt libze les poſſeſſions des auks Sũrs ſont expzes & miſe en certain, cybien que les poſſeſſions del Roy. Et ceux terres q̃ux ſont deſouth auters titles, come Terræ Epiſcopi de Exceſter, &c. & touts auks terres queux fueront en auter maine, & noſmes en ceſt Libze, ſont frank-fee, 40 Ed. 3. 45. F. N. B. 16. D.

Et pur ceo Bodin ne fuit bien infozme, quaunt il eſcrit, libr. 6. de Republ. cap. 2. que Guilliaume le Conquerant, apres avoir conqueſte la Roialme de Angleterre, declaira tout le pais en general, & les heritages de cheſcun en particulier, a luy acquis & confiſques per droit de guerre, traitant les Anglois come ſes Fermiers, &c.

Et iſſint eſt Renatus Choppinus deceive, en ſon libze de Domanio Franciæ, ou il, parlant de moderation uſe p̃ les antient Romans & Lombards en lour Conqſts, Quanto iniquius, dit il, Willielmus ille Britannicus, lata lege Agraria, ſe omnium poſſeſſionum Dominum jactabat, ut non modo privatorum bona cenſerentur, ſed quicunque in futurum poſſideret, grave annuum vectigal quaſi nudus fructuarius exſolveret, ut à Polydoro traditum eſt? Mes noſtre Recozd de Domeſday eſt, en ceſt point, de melieur credit q̃ touts les fozrein diſcourſes ou Chzonicles de mounde.

Auxy le Roy Edw. 1. feſoit un Conqueſt de Dominion de Wales, & chaungeoit lour Leyes & Cuſtomes, come il ad expzeſſe en ſon Charter ou Statute de Ruthland, ou il dit, Divina providentia terram Walliæ cum incolis ſuis, prius nobis jure feodali ſubjectam, in proprietatis noſtræ Dominium totaliter & cum integritate convertit, & Coronæ Regni noſtri annexit: & quant a lour Leyes & Cuſtomes il dit, quaſdam illarum de conſilio procerum regni noſtri delevimus, quaſdam permiſimus, quaſdam correximus, ac etiam quaſdam alias adjiciendas & faciendas decrevimus, &c. Coment que ceſt Roy ad donques gaine le pzopziety d̃ ceſt Dominion, iſſint q̃ les inhabitants de ceo ount ſubmitte eux meſmes a ſon volunt de alto & baſſo, come eſt recite en meſme le Charter;

Charter; uncore il appiert, que il admit ceux queux voloent estre rule & goberne per la Common Ley Dengleterre, que il ad establish enter eux per mesme le Charter, de aver franktenemēt & inheritance en lour terres: car la il prescribe un forme de briefe de Assise de Novel disseisin, de Mortdancestor, & de Dower, destre port de terres en Wales solonque le course del Common Ley Dengleterre. Vide Bulkleys Case Plow. Comment. 125.

Cest Case dependoit en Bank le Roy per le space de 3 ou 4 ans, & fuit argue pluscors foits, & les Justices al several temps ont deliver lour opinions en les several Points avantdit. Mes apres, Sir Humphrey Winch esteant Chiefe Justice, les parties, ove conge del Court, descendoent al agreem̄t, per q̄ reasonable division fuit fait de cest territorie enter eux: en quel division le castle & terre en question, enter auters, fuit allot al Cahir O Callaghan le defendant. Et ore, preter lour mutual assurances, ils ont obtaine several Graunts del Roy per vertue de Commission, p̄ strengthning de defeative titles. Et illint cest Countrey est bien settle. Bolton Recorder de Dublin & Jo. Meade fueront a counsell ove le Plaintife, & le Atturney generall ove le Defendant.

Paschæ

Paſchæ 5 Jacobi,

En Bank le Roy.

Le Caſe del Deane & Chapter de *Fernes, ſive*, De Capitulariter Congregatis.

EN Ejectione firmæ port per Richard Pemerton plaintif vers John Allen def. ſur ſpecial verdict trove, le Caſe en ſubſtance fuit tiel.

Le Deanry d Fernes, que eſt Donative per le Roy, & nemy Elective, eſteant void, la Roigne Eliz. anno 20. de ſa reigne, don & grant ceſt Deanry per Letters patents al Walter Turnor Clerke, ſans limitation del alcun eſtate pur vie ou auterment.

Apres Turnor eſt deprive per ſentence del Hugh Allen, adonques Ebelque de Fernes, pur ceſt cauſe, viz. pur ceo que le dit Turnor fuit mere lay home, & nient capable d tiel Dignitie.

Apres ceo la Roigne Eliz. anno 26. de ſa reigne, done & grant meſme le Deanry al un Campion durant ſon vie. Puis le dit Ebelque de Fernes fiſt Leaſe del Mannor de Fiddert en le County de Wexford, eſteant parcel del temporall poſſeſſions del dit Ebelquerie, al John Allen le defendant: quel Leaſe fuit confirme per le Deane & Chapter de Fernes en ceſt manner. Viz. le Chapter adonques conſiſtoit de 11 perſons en number, viz. le Deane & 10 Prebends.

bends. Turnor & Campion esteant ambideux en pleine vie, Campion fist un Gray, esteant un mere lay home, son Proctor ou Substitute, p̄ doner son assent al touts Leases & Grāts, &c. Cest Proctor & 3 des Prebends tantum convenont ensemble, & fixont le Chapter-seale al Confirmation de cest Lease; quel Confirmation fuit fait en le nosme del Deane & Chapter. Apres ceo, 3 auters des Prebends al several jours, chescun aperluy, subscribont lour nosmes al dit Confirmation. Puis le Evesque que fesoit le Lease morust, & Thomas Ram est fait Evesque de Fernes, que enter sur le def. & fait Leas al plaintife. Et si le primer Leas fait al defendant soit bien confirme p le Deane & Chapter, ou soit voide pur fault de bon Confirmation, fuit le question. Et fuit adjudge que le Leas fuit void apres le mort del Evesque q̄ fesoit ceo, pur fault de bon Confirmation del Deane & Chapter.

Et en cest Case 3 Points fueront move & debate.

1. Si le Donation del Deanry fait per la Roigne Eliz. al Turnor, sans limitation del ascun estate, soit void, ou quel estate il avera.

2. Admit q̄ le Deanry soit bien grant al Turnor sans limitac̄ del estate, si le sentence de Deprivac̄ fait luy nul Dean, issint q̄ le Deanry esteant void p ceo, le Donation fait al Campion serroit bon.

3. Admit q̄ Campion fuit loial Deane al temps del Confirmation fait, si le Deane & le greinder part del Chapter ont view & confirme cest Leas, ou nemy.

1. ET primerm̄t fuit object per le Counsell del defendant, que le grant de le Deanry p la Roigne Eliz. al Turnor, sans limitation del estate, fuit void tout ousterment pur le incertainty del Grant: car le intent de la Roigne nest expres en certaine, sil avera le Deanry p̄ vie, a volunt, ou autermt. Come si Roy grant terre al I.S. Habendum a luy & ses heires males, sans dire, de son corps, le Habendum ou limitation de le estate en cē Grant esteant voide pur le incertainty, tout le Grant est tenus void a touts entents, issint que le Grantée ne serra tenant a volunt le Roy. Alton Woods Case in le 1. part des Reports de le Seignior Coke, fol. 43. b. & 49. a. 18 H. 8. Br. Patents 104. le Seignior Lovels Case.

Mes

Mes admit que le Grant ne fuit ousterment void, le melior estate que passa per ceo fuit forsque a volunt del Roigne, come appiert per le livre de 17 Ed. 3. fol. 45. q̄ est authority direct en le point. Car la Scir' facias fuit port vers un Deane del frank chappel del Roy, de aver execution del annuitie recover vers son predecessor. Thorp; Nous vous diomus, q̄ le Roy per sō Charter, que cy est, a nous doñ le Deanrie; & en le Charter nest pas termine coment & come longemt a tener; isſint que ceo ne poet estre entend forsque a volunt le Roy. Judgement, si le briefe gise vers nous. R. Th. Il ne claime nul estate en certainty, & ne dit pas cause pur que le briefe ne girroit vers luy. Judgemēt, & priomus execution. Tho. Si auter person face tiel fait, & done en non certaine, certum est que franketenemēt passa; mes quant al Roy, il nest pas isſint, car si il done terre ou tenement per tiel manner, il navera forsque a volunt.

Accordant a cest opinion de Thorp fuit tenus pur ley in Camera Stellata 1 Mar. Dier 100. a. que si la Roigne per sa Charter grant terre probis hominibus villæ de Islington, sans dire, habendum eis, hæredibus vel successoribus suis, rendant rent, que ceo est bon Corporation a cest entent; mes que ils ne sont forsque tenants a volunt del terre. Vide 5 E. 4. 8. b. le Case del Garter roy des Heraulds, ou cest office fuit grant al un sans limitation del estate, & est tenus que il fuit officer a volunt del Roy.

Donques si Turnor fuit Deane forsque a volunt del Roigne, el ad determin sa volunt per sa second Grant fait al Campion, p̄ ceo que cest second Graunt fuit a commencer in præsenti; & ne besoigne de signifier le determination de sa volunt per expresse parols: come est tenus 1 & 2 P. & M. Dier 107. in le Case del Almoner, & en le Case de Alton Woods cite devant, fol. 50. a. Et ceo appiert auxy per le judgemēt del Parliament en le Act de 6 H. 8. cap. 15. que provide, que le second Patēt recitera le primer Patent fait per la Roigne durante beneplacito, auterment le primer ne serroit void, come fuit per la Ley devant le selans del dit Act. Mes cest Act nest en force icy.

Second.

2. SEcondment fuit object, que admit que le Graunt fait al Turnor ſerroit bon durãt ſon vie, uncore il fuit depriue per le ſentence del Eveſque, pur q̃ le Deanry debeignoit voide devant le ſecond Graunt fait al Campion: q̃l Sentence de Deprivation, cõm̃t que le Deanry ſoit Donative p̃ Letters patents del Roy, neſt void, mes eſtoit en force tanque ſoit revers per appeal. Car un Deanry eſt ſpiritual dignity, come eſt tenus en Goodmans Caſe, 10 Eliz. Dier 273. Et le Eveſque p̃ common entendm̃t ad ordinary jurisdiction ſur touts Eccleſiaſticall cauſes deins ſon dioceſſe: & com̃t q̃ il ad commit contempt en viſiting le Donative del Roy, & en donant le ſentence del Deprivation, come Barlow Eveſq̃ de Bath encurroit le penalty de Præmunire en tiel caſe, Brooke Præmunire 21. uncore le Sentence neſt void. Et a ceſt entent eſt le differente pris p̃ Parning 13 Aſſ. p. 2. que ſi home ad noſme de dignity, & ſoit ouſte per celuy que ad colour de luy ouſter de ſa dignity, come per Ordinary, meſq̃ ceo ſoit per Deprivation nient due, la il covient ſuer de aver reſtitution de ſa dignity, devant que il poet ſuer per ceſt noſme: aliter eſt ſil ſoit ouſte per auter. Et accordant a ceo eſt le opinion de Herle & Scroope 8 Aſſ. p. 21. Vide auxy Caſe de Vere & Jeffreyes, en le 5. part des Reports de le Seignior Coke, fol. 30. a.

3. TIercement fuit object, que le Confirmation fait en tiel manner come eſt trove per le verdict eſt aſſets bon. Car primerment le Deane poet bien doner ſon aſſent, & fixer le Seale del Chapter p̃ Procor ou Subſtitute; & ſerra cy avaylable, come ſi il ad eſtre perſonally preſent. Qui per alium facit, per ſeipſum facere videtur. Et iſſint les Barons en Parliament donont lour aſſent per lour Proxies. Et coment que ceſt very point ſoit fait un queſtion 3 & 4 Philip. & Mar. Dier 145. b. ou Eveſque ad graunt fee-farme de terre que il ad en droit de ſon Eveſquery, & Confirmation fuit fait per Decanum & Capitulum, abſente Decano in remotis, ſed præſente Præſidente Decani, quem per ſimplex verbum Decanus conſtituit ſuum locum tenentem, & tradidit ei claves ſuas, una cum voce & autoritate Decani, & hoc intratur in Regiſtro juxta antiquam conſuetudinem; ſi le ſucceſſor poet avoider ceſt Graunt, fuit move coram Juſticiariis,

ciariis, &c. Coment que lour resolution en cest point ne appiert, uncore appiert que suit un auntient custome, que le Deane puissoit faire un Substitute en tiels cases; & si tiel custome ad estre use, les acts fait per tiel Substitute serront bon & abaileable en Ley, pur le reason mise en le Case de Corporations, en le 4. part des Reports de le Seignior Coke, fol. 77. b.

Auxy le Confirmation est assets bon, coment que les particular Prebends, queux feloent le greinder part del Chapter, ont done lour assents al severall jours. Car sicome en felans de lour common Acts, ils ne sont lies al alcū lieu certaine, come a lour Chapter-house, car chescun lieu en queux ils voilont assembler pur faire lour common Acts est bon Chapter-house, 21 Ed. 26. 9 Ed. 4. 39. 14 Henr. 6. 16. issint ils ne sont lies al alcun temps certaine pur doner lour consents. Mes si lour consent appiert per tiel demonstration que la Ley require, ceo est sufficient. Et quel demonstration est ceo? certes, le fixing de lour common Seal, 14 H. 6. 17. a. car la est dit, que le fixing del Seale monstre lour agreemt: & la Paston dit, come poet lour assent estre mieur probe, que per le ensealer de lour common seale? Vide 4 E. 2. Fitz. Obligation 16. Et comēt que ils expressont lour assents al several jours, per parol ou signature, unc le fixing del Seale unite les severall assents, & fait un joynt assent de touts.

Et le fait de un Corporation ne besoigne delivery, come le fait de un natural person, mes le apposition del common Seale done perfection a ceo solemt. Auxy en plusors cases, assent apres un act fait donera force a ceo: come Atturnament done force al grant de reversion fait devant; & si disseisin soit fait al use de I.S. cō agreemt apres faira luy disseisor, sicome il ad estre present al temps del cōmitting de le disseisin. 37 Ass. p. 8. 38 Ass. p. 9.

1. MEs de auter part suit respond per le Counsell del plaintife, & resolve per le Court, primerment, que le Don ou Graunt de le Deanry de Fernes fait per la Roigne Eliz. al Turnor, sans limitation de alcun estate en ceo, fuit bon, & que il ad cy large estate en cest Deanrie per cest Graunt, come alcun Deane que est Elective poet aver

aver en son Deanry que il ad per election.

Et pur cleering de cest Point, 3 diversities fueront prise: un surdont sur le differente des Persons queux sont Grauntors; auter, hors del divers quality des Choses granted; & le tierce, del different capacities en queux les Grauntees poent prender les choses.

1. Pur le primer differente. Si common person graunt rent, ou auter chose que gist en graunt, tantum, sans limitation del alcun estate, per delivery del fait tantum franktenement passa, 17 Edw. 3. 45. a. Et le reason est, pur ceo que le graunt del common person serra prise plus fort envers le grauntor, 7 Ass. p. 1. Mes si le Roy graunt rent ou terre sans limitation del alcun estate, le graunt est meerment void pur le incertainty, & le grauntee ne serra tenant a volunt al Roy; come est rule en le Case de Alton Woods cite devant: & le reason est, pur ceo que le graunt del Roy serra prise plus fort pur son benefit & advantage, & si poet estre prise a double entent, serra adjudge void pur le doubtfulnesse de ceo. Et cest diversity surd sur le differente des Persons queux sont Grauntors.

2. Le differences que result hors de diverse quality des Choses graunted est tiel.

Si le Chose grant soit de tiel nature, isslint que divers estates poent estre limit de ceo, come de terre, Seigniory, rent, & hujusmodi, si le Roy en son graunt de tiel chose ne limit alcun certeine estate al grauntee, rien passera per cest graunt, mes serra adjudge meerement void pur le incerteinty, come est monstre devant. Mes si le chose granted soit tiel dont divers estates ne poent estre limited, mes un estate tantum est incident a ceo, que la Ley limit sans alcun limitation fait per le grauntor, de tiel chose le graunt del Roy ne poet estre doubtfull ou uncertaine, le Roy ne poet estre deceive, ne poet erre; car Error est in vivo, & nul error poet estre ou est forsque un foy destre prise.

Mes quel chose est ceo a que un estate tantum est incident per la Ley, & de que divers estates ne poent estre limit? Certes ceo est un Office. Mes quel Office? Certes tiel Office que per la Ley courge en perpetuall successions, & nemy en course de discent, & dont le Officer est touts foits

corps politique: & de cest nature sont touts Offices Ecclesiasticall. Grendons Case, Plow. Comment. 497. a. Car ꝺ divers secular Offices severall estates poent estr̄ limit, come ꝺs Offices ꝺ Constable Dengleterr̄, Marshal, Viscont, Gardein del Flæt, &c. queux poent estr̄ grant en fæ, en taile, p̄ vie, ou a volunt. Et le reason est, p̄ t̄ q̄ tiels tempoꝛal Officers ont lour Offices en lour natural capacities, & le Roy en policie poet suppresser & revive ceux Offices pro loco & tempore, & per consequence poet limit tempoꝛarie estates en ceux.

Mes Ecclesiasticall Offices, come Evesquery, Deanrie, Reaoꝛy, q̄ux sont institute p̄ le governm̄t ꝺ la Saint Esglise, besoigne destre continue in course ꝺ perpetual succession, usque ad finem seculi: Et p̄ t̄ nul home poet p̄nꝺ tiel Office en son naturall capacitie, mes chescun tiel Ecclesiasticall Offic̄ est coꝛps politique ipso facto, come Parson est incoꝛpoꝛate per le Common Ley, 40 Edw. 3. 27. Et illint ē Evesque, & Dean, &c. Et touts ceux ont lour Offices en politique capacity, & en course ꝺ succession; & ceux sont les Offices dōt la Ley ꝺm̄in un estat̄ tain, & dont diversity des estates ne poet estre limit.

3. Et illint le tierce differences appiert, viz. ceo que surd hoꝛs del divers capacities des Gꝛauntées. Car Gꝛauntée del tempoꝛall Office, come del Office de Constable ou Marshall, poet pꝛender ceo en son naturall capacity, & son heire poet pꝛenꝺ ceo en course ꝺ discent, si estate ꝺinheritance soit limit ꝺ ceo: mes Gꝛauntée ꝺ spiritual Office, viz. ꝺ Evesq̄ry, ou Deanry, &c. ne poet t̄ p̄nꝺ en natural capacity, ne en course de discent, mes en politique capacity, & en course de succession solement; car auter estate il ne poet aver en ceo, ne auter estate poet estre limitt de ceo. Evesque ne poet aver estat̄ a volunt, pur ans, ou pur vie, ou en taile, en son Evesquery; ne Deane poet aver alcun tiel particular estate en son Deanry; mes ils ont estate en fæ al meins: mes ceo nest a eux & lour heires, mes solement a eux & lour successoꝛs.

Pur cest reason, quant le Roy graunt & done Evesquerie, (car touts Evesqueries en cest Realme sont done & graunt per Letters patents per l' Estatute de 2 Eliz. cap. 14.) ne besoign alcun limitation del estate en le donation, nient

plus

plus que en le investiture per Annulum & Baculum, fait per les antient Roys Denglett devant le Norman Conquest & aps. Car le Roy John fuit le primer Roy q̃ per son Chart, dat 15. Januarii, anno 16. de son reigne grauntoit power & libertie al touts Esglises cathedrall & conventuall in Englett de fait canonical election de lour Prelats, petita prius de luy, ses hrs & successors, licentia eligendi, &c. q̃l Chre ē trove en Matth. Par. Hist. mag. fol. 253.

Mes ou le Roy a cest jour en cest Realme done & grant Evesq̃ry ou Deanry per ses Letts patents, la ne besoign ascũ limitation del estat, car la Ley ad limit l'estat devant: come en assignemt d Dower al widow del Roy, nul estate est limitt, N. Br. 263. c. car la Ley create sa estate devant. Issint sur Presentation, Institution ou Induction del Parson al Rectorie est nul limitation del estate que le Parson aũa en le Rectorie, uncore la Ley don a luy fee in jure Ecclesiæ.

Et sicome en grant del Deanry fait per le Roy ne besoign de aver ascun limitation del estate, issint si particular estate serroit limitt, come pur vie, ou pur ans, ceo serroit repugnant & contradictorie al Grant. Car le Dean ne poet pnder le Deanry mes a luy & ses successors, que est estate en fee, & p ceo tiel limitation serroit void. Come si feoffment soit fait al I. S. & ses heires, habendum pur vie, cest habendum est void, car est contrarie a les premisses. 21 Henric. 8. Br. Estates 50. Vide 11 Henr. 7. 12. a. Si terre soit grant al Maior & Commonaltie, sans pluis dire, ils aũont fee simple.

Auxy Deanry que est donative ne poet estre graunt pur aus, ou a volunt tantum, p reason de un graund inconvenience que insueroit. Car le franktenemt des terres queux le Deane ad en droit del Deanry tantum serroit per cest mean en perpetuall abeiance, quel inconvenience la Ley ne voet suffer.

Auxy Deanry ou Evesq̃rie ne poet estre grant p vie tantum, p aut inconvenience, car Dean ou Evesq̃ poet aũ bre de droit, Lit. 143. b. q̃l bre ne poet estr port per cesty q̃ ad estat forsq̃ p vie; & p tiel mean l'Esglise serroit dishinherit, & sans remedy, q̃ la Ley ne voet permitt.

2. QUaunt al second Objection, viz. Que Turnor fuit deprive per Sentence del Evelque, quel Sentence ne fuit unques reverse per Appeale, & illint le Deanry fuit voide quant le Graunt fuit fait al Campion, per que Campion fuit loiall Deane quaunt le Leale en question fuit confirme, fuit forcment argue per le Counsell del Plaintife, que le Sentence de Deprivation fuit tout oustermt void, & que Turnor remainoit Deane nient obstant cest Sentence.

Car cest Deanry est donative per Letters patents del Roy, nient visitable per le Evesqe, & p conseqnce hors d son Jurisdiction, & illint le Sentence del Deprivation est void, esteant coram non Judice. Come Judgmt de Franck-fee en Court de antient Demesne, 11 Henr. 4. 17. Judgment done en le Marshallea sur contract fait hors del Hierge, & ou nul des parties est del Hostell del Roys & Judgment en le Court d Admiraltie de re facta in corpore Comitatus, 19 Ed. 4. 8. 20 Edw. 4. 15. & Judgment done en le Common Bank sur appeale d Murder port la, 22 Edw. 4. 33. Tiels Judgments sont void, ou les Judges nont Jurisdiction in tiels causes. Per q cest Sentence fuit void en cest cale icy, p t q tm Deanrie, esteant un Donative d Roy, est exempt & hors d Jurisdiction del Evelque.

Car le Ordinary nad rien a meddler ove un Donative, que poet passer per don al Parson sans institution ou induction, come est dit 8 Assisar. pl' 31. Et que les Donatives del Roy sont hors del Jurisdiction del Ordinarie, & nient visitable per luy, vide 20 Edw. 3. Fitz. Excomm. 9. 16 Ed. 3. Fitz. Brief 660. 21 Edw. 3. 60. 6 Henr. 7. 14. Cawdreyes Case, en le 5. part des Reports de le Seignior Coke, fol. 15. a. Mes le visitation de touts Donatives del Roy appent properm al Seigniour Chauncellor del Realme, N. Br. 42. a. ou autm le Roy poet faire speciall Commissiñs a tm purpose, 6 Henr. 4. 14. & Goodmans Case, 10 Elizab. Dier 273. ou l' Evelque de Bath & Wells ad especiall Commission agard a luy per l' Roy Edw. 6. de visiter le Deane & Chapter de Wells, per force de quel auctority Goodman fuit deprive. Mes en cest cale l' Evelque de Fernes ad nul Commission de visiter le Deane, & pur ceo coment que il ad commit

mit contempt envers la Roigne, pur que il fuit punishable; uncoꝛe eſteant un Mullity en le Sentence de Depꝛivation, ceo ne grævera le Deane, nient plus que un Judgement al Common Ley eſteant done coram non Judice grævera le partie vers que tiel judgement eſt done. Et le reaſon del judgement en Vere & Jeffreyes Caſe ſemble deſtre un Rule de ceſt point. Car la eſt tenus, que ſi Oꝛdinarie de un Dioceſſe committ adminiſtration des biens de un inteſtate que ad bona notabilia en divers Dioceſſes, tiel adminiſtration eſt mꝛement voide, tibien quant al biens deins ſon Dioceſſe come alioꝛs; pur ceo que per nul meane il poet aver juriſdiction del cauſe. Iſſint en ceſt caſe le Sentence de Depꝛivation eſt mꝛement void, pur ceo q̄ le Evеſque come Oꝛdinary poet p̄ nul mean aver Juriſdiction ſur le Donative del Roy, que eſt exempt de ſon Juriſdiction tout outterment per la Ley.

Mes quaunt a ceſt Point Ley Chiefe Juſtice hæſitavit, & fuit plus toſt de opinion q̄ le ſentence de Depꝛivation fuit effectual en Ley tanque fuit reverſe per Appeale. Et ſur Vere & Jeffreyes Caſe il pꝛiſt difference enter Miniſteriall act & Judiciall act. Committal de Adminiſtration neſt q̄ Miniſteriall act, & p̄ ceo ſerra void en le caſe avantdit; mes Depꝛivation eſt Judiciall act, que ne ſerra void foꝛſque per auter Judgem̄t ſur Appeale. Auxy ou Fitz. N.B. 42. a. dit q̄ Pꝛohibition ſerr̄ direct al Oꝛdinary, q̄ il ne viſitera les Donatives del Roy, ceo pꝛove que le Eccleſiaſticall Court ad Juriſdiction en cauſes de meſme le nature, & iſſint ad colour de pꝛocæder al Sentence; & ſi Pꝛohibition ne vient devant le Sentence, ceo eſtoiera tanque ſoit adnul ſur Appeal.

3. Mes quaunt al tierce Point, fuit reſolve per tout le Court, que coment que Turnor ad eſtre bien depꝛive, & Campion ad eſtre loiall Deane al temps de Confirmation fait, uncoꝛe le Leas fait al def. ne fuit bien confirme, ne per le Deane, ne per le greinder part del Chapter, come devoit eſtre per la Ley en tiel caſe.

1. Pꝛimerm̄t, nul Confirmation fuit fait per le Deane. Car il ad fait un Pꝛoctoꝛ que fuit mꝛement eſtraunger al Chapter, & nient capable de tiel Pꝛocuration, & pur ceo tout

tout que il ad fait eſt void p le Rule del Common Ley, & per le Rule del Canon Ley. Le Rule del Canon Ley en ceſt caſe eſt, Abſens non poteſt demandare votum ſuum niſi uni de Capitulo, Inſtit. Juris Can. lib. 1. cap. Electionibus. Et eſt auter Rule, Oportet quod Procurator ſemper inſtitutus ſit de Collegio: & auter, Votum dari non poteſt per literas.

Le Rule del Common Ley eſt agreeable al Canon Ley en ceſt point. Car en le hault Court de Parliament, come ad eſtre dit devant, les Barons poent doner lour votes per Procuracy ou Proxie: mes lour Procutors covient eſtre Barons, & Members de meſme le Mealon; car eſtraunger neſt capable de tiel Proxie. Mes ou Corporation paſſera alcun intereſt, le Common Ley ne voet ſuffer que les members del Corporation doneront lour aſſent per Procutors ou Subſtitutes. Et p ceo 11 H. 4. fol. 64. ſur compoſition p Diſmes, un perſon grant Annuity al Abbe de Battell, quel Grant eſt confirme per Eveſque, Deane & Chapter, eſteant Patrons: & il appiert per le fait del Confirmation, que le Deane fuit abſent, & ne miſt le Seale a ceo, mes le Chantor fuit ſon Commiſſarie, & miſoit le Seale p luy. Et la eſt tenus, que comẽt que le Deane poet aver un Preſident ou Commiſſary p exerciſer ſon Spirituall Juriſdiction, uncore tiel Commiſſary ne poet charger les poſſeſſions del Eſgliſe. Et iſſint le queſtion move en 3 & 4 Philip. & Mar. Dier 145. cite devant, eſt reſolve per le Rule de ceſt libre.

2. Secondẽt, le major part del Chapter nont done lour conſent al ceſt Confirmation. Car le entier Chapt conſiſtoit de 11 perſons, & 3 de eux tantum ove le Procutor del Deane fueront preſent quant le Seale fuit affix al ceſt Confirmaẽ. Et que le major part del Corporation doent conſenter al touts acts queux lieront le Corporation, eſt manifeſt auxy per les rules del Canon & Common Ley.

Le Rule del Canon Ley appiert en Panormit. cap. Cum in cunctis, ou eſt dit, que Authoritas & poteſtas Capituli conſiſtit in majori parte ejus & ſaniori, & ſic totum Capitulum facere dicitur quod facit major & ſanior pars. Et hoc verum eſt in omnibus actionibus & electionibus, præterquam in electione Romani Pontificis, ubi oportet quod duæ partes conſentiant.

La Common Ley ad meſme le Rule, 14 Henr. 8. 29. ou eſt dit,

dit, que le Deane & le major part del Chapter font le Corporation, & lour act eſt le act del Corporation, coment que les auters ne agreront. Iſſint 21 Edw. 4. 27. eſt dit, ubi major pars, ibi tota: 15 Edw. 4. 2. a. 9 Henr. 6. 32. a meſme le entent.

Et ceſt difference fuit preſe, viz. que en Colleges & Corporations le major part des members doent doner lour voices in numero diſtincto: mes en confuſed & incertaine numbers, come en election de Chivalers al Parliament, ou de Coroners ou Verderors en le County Court, le greindr voice ou acclamation eſt ſufficient pur monſtrer le aſſent del greinder part des freholders queux font le election. Plow. Comment. 126. a. Et ſicome le major part del Chapter doet conſenter en ſeſans de ceſt Confirmation, & ceſt conſent doet eſtre expreſſe per le fixing del Seale, come eſt tenus 14 H. 6. 17. iſſint ils doent ceo faire en un lieu & al un temps; car auterm̃t poet eſtre dit Aſſenſus, mes nemy Conſenſus; ou le Leas doet eſtre confirme cum aſſenſu & conſenſu del Deane & Chapter. Car ſicome un corps naturall ne poet faire alcū perfect act ſi ſoit diſmember, viz. ſi le teſt ſoit en un lieu, & les maines en auter lieu, & ſic de cæteris: iſſint eſt de corps politique, les perſons queux ſont members de ceo doent eſtre capitulariter congregati en un lieu certaine; auterment, ſi ils ſont ſcatter & diſperſe en ſeveral lieus, ceo que ils font ne ſerra dit le act del Corporation, mes ſerra dit factum ſingulorum. Et pur t̃ Panormitan. dit, Univerſitas vel Corporatio non dicitur aliquid facere, niſi id ſit collegialiter deliberatum, etiamſi major pars id faciat. Vide 15 Ed. 4. 2. a. ou le major part des Moignes ont ſubſcribe lour noſmes al un fait del Abbe, mes ne fuit expreſſe que ceo fuit fait ove aſſent & conſent del Covent, ceo ſerra dit deſtre fait per les particular perſons queux ont ſubſcribe, & nemy per le Corporation, & tiel fait ne liera le Meaſon.

Uncore fuit agreé, come ad eſtre dit devant, que le Deane & Chapter ne ſont confine a lour Chapter-houſe, mes que ils poent aſſembler & faire lour Acts alioꝛs. Et pur ceo eſt tenus 21 Edw. 4. 26. que ou fait poꝛt date in domo capitulari, aberment poet eſtre, que ceſt fait fuit deliver en auter lieu. Et a ceſt entent eſt 27 Aſſ. p. 23. le Caſe de Prior alien.

alien. Uncore il covient que ils se assemblont en aſcun certain lieu, & que le major part soit present en ceſt lieu, quant ils donont lour consent al aſcun common fait. Et pur ceo le election des Coroners doet estre fait in pleno comitatu, come appiert per le briefe de Coronatore eligendo: Quia nuper unus Coronatorum in comitatu tuo diem clausit extremum, &c. Tibi præcipimus, quod si ita sit, tunc in pleno comitatu tuo de assensu ejusdem comitatus eligi facias, &c. Vide Regiſtr' 177. a.

Auxy le consent del major part del Chapter doet estre done al un temps, simul & semel, & nemy scatteringly, & al severall jours. Car ceſt Consensus si ne soit simul. Car consensus est voluntas multorum ad quos res pertinet simul juncta. Et pur ceo Panormit. cap. Cum in Eccleſia, dit, Si consentiant ut singuli, & non collegialiter, cum actus per communem consensum debeat expediri, non valet. Et in Institut. Juris Canon. lib. 1. cap. de Electionibus, est dit en le gloſſe, Electio quæ à principio fuit nulla, quia facta à minori parte Capituli, non poteſt convalidari per consensus particulares supervenientes.

Agreable a ceſt Rule est le reason del caſe mis en le Doct. & Stud. Br. Judgements 148. que si feme suffer recovery de sa joynture encounter le statut de 11 H. 7. sans le assent del ceſty en reversion, & apres ceſty en reversion releas al recoveror p fine, ceſt assent vient trop tard, & ne doet faire le recovery bon, q̃ fuit un foits void. Issint en ceſt caſe, quant le fait del Confirmation ad le Chapter-Seale fire a ceo, donques ceo fuit void pur fault del consent del major part del Chapter, & p̃ ceo per le straggling assents de 3 auters Prebends done apres ne serra fait bon, ou fuit void devant.

Et sur ceſt darraine Point principalment, apres pluſors arguments, le Court donoit Judgement pur le plaintif. Et per ceſt Judgement le Evesque de Fernes recoveroit un meaſon pur son habitation, ou devant touts les mannors & mansions del Evesquery esteant alien per ses predeceſſors, il navoit ubi reclinaret caput suum. Le Atturney General & Bolton Recorder de Dublin fueront a Counſell ove le pl. & le Solliciter Generall & Jo. Meade del Middle Temple ove le defendant.

Hillar'

Hillar' 3 Jacobi.

Le Reſolution des Juſtices touchant le Iriſh Cuſtome de Gavelkind.

PRimerment eſt aſcavoir, que les terres poſſeſſe per les mere Iriſh deins ceſt Realme fueront divide en ſeverall Territories ou Countries; & les enhabitants de chelcun Iriſh Country fuerõt divide en ſeverall Septs ou Lineages.

Secondm̃t, en chelcũ Iriſh Territory fuit un Seignior ou Chiefetaine, & un Taniſt, q̃ fuit ſon Succeſſor apparant. Et de chelcũ Iriſh Sept ou Lineage fuit auxy un Chiefe, q̃ fuit appel Canſinny, ou Caput cognationis.

Tiercement, touts les poſſeſſions deins ceux Iriſh Territories (devant q̃ le Common Ley Dengleterre fuit eſtabliſh p̃ tout le Realme come ore eſt) curgeont toutfoits, ou en courſe de Taniſtry, ou en courſe de Gavelkind. Chelcun Seigniory ou Chiefry, ove le portion de terre que paſſoit ove ceo, aloit ſans partition al Taniſt, que touts foits veignoit eins per election, ou fort maine, & nemy per diſcent: Mes touts les inferior Tenancies fueront partible enter les males en Gavelkind.

Uncore le eſtate que le Seignior avoit en le Chiefry, ou q̃ les inferior tenants avoent en Gavelkind, ne fuit eſtate de enheritante, mes un temporary ou tranſitorie poſſeſſion. Car ſicome le prochein heir del Seign̄ ou Chiefetaine ne enheriteroit le Chiefry, mes le plus eigne & plus digne ðl Sept,

(come eſt monſtre devant en le Caſe de Taniſtry) que ſouvent-foits ſuit remove & expell per un auter que ſuit plus active ou fort que luy: iſſint les tres de nature de Gavelkind ne fueront partible enter les prochein heires males del ceſty que moruſt ſeiſie, mes enter touts les males de ſon Sept, en ceſt manner.

Le Canſinny, ou Chiefe de Sept, (que ſuit communement le plus antient del Sept) feloit touts les partitions per ſon diſcretion. Ceſt Canſinny, apres le mort de cheſcun tertenant que avoit competent portion de terre, aſſembloit tout le Sept, & aiant miſe touts lour poſſeſſions en Hotchpotch, feſoit novel partition de tout: En quel partition il ne aſſignoit a les fits de ceſty que moruſt le portion que lour pere avoit; mes il allottoit al cheſcun del Sept, ſolonque ſon antiquity, le melieur ou greinder purparty.

Ceux portions ou purparties iſſint eſteant allotte & aſſigne, fueront poſſeſſe & enjoy accordant, tanque novel partition fuit fait; que al diſcretion ou volunt del Canſinny puiſſoit eſtre fait ſur le mort del cheſcun inferior tenaunt. Et iſſint per reaſon de ceux frequent partitions & removements ou tranſlations des tenants del un port al auter, touts les poſſeſſions fueront uncertaine: & le uncertainety des poſſeſſions fuit la very cauſe que nul civil habitations fueront erected, nul encloſure ou improvement fuit fait des terres, en les Iriſh Countries ou ceſt Cuſtome de Gavelkind fuit in uſe, ſpecialment en Ulſter, que ſembloit per tout deſtre un wilderneſſe, devant ceſt novel plantation fait per les Engliſh undertakers la. Et ceo fuit le fruit de ceſt Iriſh Gavelkind.

Auxy per ceſt Iriſh Cuſtome de Gavelkind les Baſtards avoent lour purparties ove les Legitimate, les Femes fuerõt tout ouſterm̃t exclude de Dower, & les Files ne fueront inheritables, coment que lour Pere moruſt ſans iſſue male. Iſſint que ceſt Cuſtome differoit del Cuſtome de Gavelkind en Kent en 4 points.

Car, 1. p le Cuſtome de Kent, le terre del nature & tenure de Gavelkind eſt partible enter les prochein hes males tantum: & tiels coparteners apres partition avoent certaine eſtate de enheritance en lour purparties.

2. Les

2. Les Bastards ne sont admit denherit̄ ovelm̄t ovesq̄ les fits Legitimate.

3. La Feme de chesc̄ tertenant en Gavelkind ē endowable del moietie.

4. Pur default des Males, les hr̄s Females inheriterōt. Vide Lamb. in le Peramb. de Kent, fol. 570.

Et p̄ ceo cest Custome de Gavelkind use en Kent ad estre toutfoits allow & approve pur bon & loyall Custome per la Ley Dengleterre.

Mes cest Irish Custome de Gavelkind fuit agréable en plusors de ceux points al Custome de Gavelkind que fuit en use en North Gales: quel Custome fuit reprove & reform̄ per le Statute de Rutland fait 12 Edw. 1. Car la est dit, Quia hactenus mulieres non extiterant dotatæ in Wallia, Rex concedit quod dotentur. Et apres c̄ est dit, Quod aliter usitatum est in Wallia quam in Anglia quoad successionem hæreditatis, eo quod hæreditas partibilis est inter hæredes masculos, & à tempore cujus non extiterit memoria partibilis extitit; Dominus Rex non vult quod consuetudo illa penitus abrogetur, sed quod hæreditates remaneant partibiles inter consimiles hæredes, sicut esse consueverunt; hoc excepto, quod Bastardi non habeant de cætero hæreditates, ac etiam quod non habeant propartes cum legitimis, nec sine legitimis. Et si forte hæreditas aliqua extunc, pro defectu hæredis masculi, descendat ad legitimas mulieres, hæredes ultimi antecessoris sui inde seisiti, volumus de gratia nostra speciali quod eodem modo mulieres legitimæ habeant propartes suas sibi inde in Curia nostra assignandas, licet hoc sit contra consuetudinem Wallensicam ante usitatam. Vide le Statute de 34 H. 8. cap. 28. Rastal Wales 32. ou le Custome de Gavelkind en Wales est tout ousterment abolish, ove divers auters usages semblable al auters Customes des Irish.

Pur ceux reasons, & pur c̄ que touts les dits Irish Countries & les inhabitants d̄ yceux dehorsenavant fueront destre governe per les Rules de la Common Ley Dengleterre, fuit resolve & declare per touts les Justices, que le dit Irish Custome de Gavelkind fuit void en Ley, non solem̄t pur l'inconvenience & unreasonablenesse de ceo, mes pur ceo que fuit un mére personal Custome, & ne puissoit alter le discent de enheritance.

Et pur ceo touts les terres en ceuſ Iriſh Countries ſerront oze adjudge de diſcender accozdant al courſe de Common Ley, & que les Femes ſerront endow, & les Files ſerront enheritables de ceux terres, nient obſtant ceſt Iriſh uſage ou Cuſtome.

Et ou les Femes des Iriſh Seignioꝛs ou Chieftaines claimont de aver ſole pꝛopertie en certaine poꝛtion de biens durant le coverture, ove power de diſpoſer tiels biens ſans le aſſent de lour Barons; fuit reſolve & declare per touts les Juſtices, que le pꝛopertie de tiels biens ſerroit adjudge deſtre en les Barons, & nemy en les Femes covert, come la Common Ley eſt en tiel caſe.

Ceſt reſolution des Juſtices, per le ſpecial oꝛder de Seignioꝛ Deputy, fuit regiſter enter les Acts del Council: mes la ceſt pꝛoviſion fuit ad a ceo, que ſi aſcun de les mære Iriſh ad poſſeſſe & enjoy aſcun poꝛtion de terre per ceſt Cuſtome de Iriſh Gavelkind devant le commencement del Reigne de noſtre Seignioꝛ le Roy que oze eſt, que il ne ſerroit diſturbe en ſon poſſeſſion, mes ſerroit continue & eſtabliſh en ceo. Mes que apres le commencement de ſon Majeſties Reigne touts tiels terres ſerront adjudge de diſcender a les heirs per la Common Ley, & ſerront adjudge deboꝛs en avant poſſeſſe & enjoy accozdant.

Mich'

Mich. 9 Jacobi,

En le Court de Caſtle-chamber.

Le Courſe del Trial de Legitimation & Baſtardy.

UN infoꝛmation fuit exhibit en le Caſtle-chamber envers le Evesque de K. & C. B. & auters, queux per pꝛactiſe & combination enter eux, & per undue courſe de pꝛocee-ding, ont endeavour de pꝛover le dit C. B. que fuit tout temps debant reputed un Baſtard, deſtre le legitimate fits & hꝛe de G.B. Eſquire, al deherſon & defamation del E.B. que fuit la ſole fille & hꝛe del dit G. B. Et ſur le Dier de ceſt cauſe, le Caſe appieroit deſtre tiel.

Environ 26 ans debant le Bill exhibit, le dit G.B. ad iſſue le dit C. B. ſur le coꝛps dun Jerois Damoſel, la quel durant la vie de G. B. ne fuit repute ſa feme, mes ſa concubine: & le dit C. B. pur tout le temps avantdit fuit ſolement accept pur le natural fits de G. B. mes nemp pur legitimate.

Apꝛes ceo, viz. 16 ans depuis la neiſſance de C. B. ſa mere eſteant en pleine vie, G. B. pꝛiſt al feme un Dame de bon eſtate & reputation, ove le aſſent de ſes Amies, & ad iſſue per luy la dit E. B. & mozuſt. Apꝛes la mozt del dit G. B, C. B. ſon reputed fits, ne ſa mere, que eſt uncoze

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en vie, ne parlont riens per le ſpace de 9 ans, mes ore tard ils ont practiſe & combine ove le dit Ebeſqꝫ ỏ K. eſteant de lour conſanguinitie, & ove pluſors auts, de prover le legitimaꝯ del dit C. B. per un irregular & undue courſe, al entent ỏ baſtardiſe & diſinherit le dit E. B.

Accordant a quel practiſe & combination, l'Ebeſque, ſans alcun ſuit commence qu move en alcun tempорall Court del Roy, ou alcun briefe direct a luy, de certifier Baſtardy ou Legitimation en ceſt caſe, & que plus eſt, ſans alcun Libell exhibit en ſon Eccleſiaſticall Court touchant cẽ matter, de ſon teſte demeſne, privatement, & nemp convocatis convocandis, 9 ans apres le mort del dit G. B, priſt depoſitions de pluſors teſmoignes a prover q̃ le dit G. B. 29 ans devant ad loialment marry & priſt al feme la dit Irrois Damoſell, mere del dit C. B, & hue le dit C. B. fuit le legitimate fits & hẽ del dit G. B. Et ceux depoſitions iſſint priſe le dit Ebeſque cauſaſt deſtre engroſſe, & reduce en forme de un ſolemne Act; & aiant miſe ſon ſignature & ſeale a ceſt Inſtrument, deliver ceo al C. B, que publiſh ceo, & per colour de ceſt Inſtrument ou Act declare luy meſme deſtre le fitz & hẽ legitimate del dit G. B. &c. Et p̃ ceſt practiſe & miſdemeanor le dit Ebeſque de K. & auters fueront cenſure, & ſur ceo ceux points fueront reſolve.

1. Coment que touts Matrimoniall cauſes ont eſtre de long temps determinable en les Eccleſiaſticall Courts, & ſont ore proprement deins le Juriſdiction & conuſans del Clergy; uncore ab initio non fuit ſic: car tibien cauſes ỏ Matrimony que cauſes Teſtamentary fueront Civil cauſes, & apperteignont al Juriſdiction de Civil Magiſtrate, come eſt bien conus al touts Civilians, tanque les Chriſtian Emperors & Roys, pur faire honor al Prelates del Clergy, ont grant ou allow al eux conuſans & Juriſdiction en ceux cales.

Et pur ceo, le Roy Dengleterre, que eſt, & touts foits de droit fuit, le fountaine de tout Juſtice & Juriſdiction en touts cauſes, tibien Eccleſiaſticall que Civill, deins ſes Dominions, coment que il allow les Prelates del Eſgliſe de exerciſer lour ſeverall Juriſdictions en ceux cauſes queux proprement apperteignont a lour conuſans;

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uncore, per les Rules del Common Ley, il ad Superintendencie sur lour procedings, ove power de direction quāt & com̄t ils procederont, & de restraint & correction, sils ne ꝓcederont duem̄t en plusors cases: come est manifest per les Briefes de severall natures direct al Evesques, per queux le Roy commaund eux de certifier Bastardy, Excommunication, Profession, Accouplement en loyal Matrimony, De admit' Clericis, De cautione admittenda, &c. & auxy ꝑ les Bres de Prohibition, Consultation, & Attachment sur Prohibition.

2. Fuit resolve, que le question de Bastardy ou Legitimacy doet estre primerm̄t move en le Temporall Court del Roy, & issue sur ceo doet estre joyne la; & donques doet estre transmit al Ecclesiasticall Court per briefe del Roy, destre examine & trie la: & sur ceo le Evesque faira Certificate al Court del Roy; a quel Certificate esteant fait en tiel due mann̄ la Ley done tiel credit, que tout le mounde serra lie & estoppe per ceo. Mes de auter part, si ascun suit a prover Bastardy ou Legitimacy soit primerment commence in le Ecclesiasticall Court, devāt que ascū question soit move de tiel matt̄ en le Temporall Court del Roy, Prohibition gist de restraine tiel suit; & si soit accompanie ove practise & fraud, come en cest case, ceo est un misdemeanor punishable en le Star-Chamber.

A cest purpose le Case de Corbet fuit mise, 22 Edw. 4. Fitz. Consultation 6. Sir Robert Corbet ad issue 2 fitz, Robert & Roger. Robert le eigne fits, esteant deins le age de 14 ans, prist al feme Matild, ove quel a son pleine age il cohabit, & cogniti & reputati sunt pro viro & uxore palam. Uncore apres Robert le eigne fits demitte de luy la dit Matild, & vivant la dit Matild, espouse un Lettice, & aiant issue per Lettice un fits morust: apres que mort Lettice preach & declare overtment, que el fuit la loiall feme de Robert, & que son fits fuit * mulier & legitimate. Sur que Roger le puisne fits del Sir Robert Corbet commence suit en le Spiritual Court a reverser les espousels ent̄ Lettice & Robert, & a metter Lettice al silence, &c. pur que Lettice purchase Prohibition; & sur ceo Roger monstre tout cest matt̄, & pria consultation: que fuit a luy deny pur cest reason principalment, viz. que lentent del suit en le Spirituall

Court

Court fuit de Bastardizer le issue enter Lettice & Robert, & de ꝓver Roger hr̄e al Robert; & l'action & originall de Bastard home ne serra primes move en le Spiritual Court, mes en le Temporal Court, &c. Et p̄ fair̄ cē point plus cleare, 2 Cases mise ꝑ Bracton, libr' 5. tit' de Exceptionibus, c. 6. fuerōt remember.

1. B. aiant issue d̄l corps dun fem̄ inheritrix née d̄vant espousels, ꝑ colour d̄ c̄ claim̄ d̄stre tenant per le curtesie, mes esteant p̄ cē cause barr̄ in assise port per luy vers A. il obtaine Bull d̄l Pape, & per authority d̄ c̄ commēce suit in Ecclesiastical Court, d̄ ꝓver son issue legitimate, quod facere non debuit, com̄ Bracton la dit; & p̄ c̄ Prohibition fuit grant d̄ staier cē suit, monstrant tout le matr̄, & quod prædictus B. ad deceptionem Curiæ nostræ, & ad infirmandum judicium in Curia nostra factum, trahit ipsum A. in placitum coram vobis in Curia Christianitatis, authoritate literarum domini Papæ, ad prædict. puerum legitimandum, &c. Et cum non possint judices aliqui de legitimate cognoscere, nisi fuerit loquela prius in Curia nostra incepta per breve, & ibi Bastardia objecta, & postea ad Curiam Christianitatis transmissa, vobis prohibemus, quod in placito illo ulterius non procedatis, &c.

2. En mesme le Chapter Bracton mist le forme dun aut̄ Prohibition, que fait le difference avant mise plus evident. Rex talibus Judicibus, &c. Ostensum est nobis ex parte A. quod cum in Curia nostra, coram Justitiariis nostris itinerantibus in tali Comitatu, arraniavit quandam Assisam mortis antecessoris versus B. de quadam terra in N. idem B. timens sibi posse opponi notam Bastardiæ in eadem Assisa, ante prædictum adventum Justitiariorum, & antequam ei Bastardia opponatur in Curia nostra in dicta Assisa, & antequam fuerit per nos Ordinario loci Inquisitio de legitimate probanda, secundum regni nostri consuetudinem, demandata, literas domin' Papæ ad vos directas impetravit, ut de legitimate sua cognoscatis, & ad probationem illius testes admittatis, ut per hoc remaneat hæreditas & successio contra consuetudinem regni nostri, quæ huc usque obtinuit, ut approbata, & Sede Apostolica confirmata; quod in causa successionis, & hæreditatis petitione, debet prius moveri placitum in Curia nostra, & cum ibi objecta fuerit Bastardia, tunc deinde transmitti debet Recordum

cordum loquelæ & cognitio Baſtardiæ ad Curiam Chriſtianitatis; ut ibi ad mandatum noſtrum de legitimitate inquiratur: quod quidem in hac parte non eſt obſervatum. Et cum hoc ſit manifeſte contra conſuetudinem regni noſtri, quod habita vel habenda inter alios contentione de jure ſucceſſionis, debeatis ad inquiſitionem de legitimitate procedere antequam à nobis hoc fuerit vobis demandatum, vobis prohibemus, &c.

Per que eſt aſſets manifeſt, que ſi le Eccleſiaſtical Court proceed al examination de Baſtardie ou Legitimation ſans direction del Temporall Court, ſerra reſtraine per Prohibition. Et ſi ſoit fraud ou practiſe en tiel proceeding, q̄ ceo ē cenſurable en le Star-chamber, le notable Caſe del Babington, Chancellor de Litchfeild, Trin. 3. Jacobi, eſt direct Precedent en le point.

3. Sicome le Eccleſiaſticall Judge ne poet enquire d̄ Baſtardy ou Legitimation ſans ſpecial direction ou maundement del Roy; iſſint quant il ad receive le briefe del Roy pur faire ceſt inquiſition, il ne doet ſurceaſe pur aſcun appeale ou inhibition, mes doet touts foits proceed tanque il ad certifie la Court del Roy. Et ceo auxy appiert en Bracton, libr. 5. tit. de Exceptionibus, c. 14. Cum autem judex Eccleſiaſticus inquiſitionem fecerit, non erit ab eo appellandum nec à petente nec à tenente: à petente non, quia talem juriſdictionem & talem judicem elegit; à tenente non, quia ſic poſſet cauſam in infinitum protrahere de judice in judicem, uſque ad Papam, & ſic poſſet Papa de laico feodo indirecte cognoſcere. Mes ceſt point eſt plus manifeſt per un notable Record compernant un Caſe de ceſt Realme, in Archiv. Turris 8 H. 3. clauſ. membr. 29. in dorſo, en ceſt forme. Rex Dublin. Archiepiſcopo, Juſtitiario Hiberniæ, Salutem. Ad ea quæ vobis nuper dedimus in mandatis, ut nobis reſcriberetis quatenus fuiſſet proceſſum in cauſa Nicholai de la Felda, qui contr' Abbatem & Canonicos Sancti Thomæ Dublinienſis in Curia noſtra, coram Juſtitiariis noſtris, petiit duas carucatas terræ cum pertinentiis in Kilredhery per Aſſiſam de morte anteceſſoris, cui etiam coram eiſdem Juſtitiariis objecta fuit Baſtardia, per quod ab ipſis Juſtitiariis noſtris ad vos fuit tranſmiſſum, ut in foro Eccleſiaſtico de Baſtardia ſive Legitimitat' agnoſceretis; nobis per literas veſtras ſignificaſtis, quod cum in foro civili

terram prædictam peteret per literas noſtras de morte anteceſſoris verſus memoratos Abbatem & Canonicos, objecta fuit ei nota Baſtardiæ, quare in foro eodem tunc non fuit ulterius proceſſum: memoratus etiam Nicholaus, de mandato Juſtitiariorum noſtrorum, in foro Eccleſiaſtico coram vobis volens probare ſe eſſe legitimum, teſtes produxit, & publicatis atteſtationibus ſuis, poſt diutinas alterationes & diſputationes, tam ex parte Abbatis quam ipſius Nicholai, cum ad calculum diffinitivæ ſententiæ procedere velletis, comparuerunt duæ puellæ minoris ætatis, filiæ Richardi de la Felda, patris prædicti Nicholai, & appellaverunt ne ad ſententiam ferendam procederetis, quia in hoc manifeſtum earum verteretur præjudicium, eo quod alias præcluderet' eis via petendi hæreditatem petitam, nec poſſit eis ſubveniri per reſtitutionem in integrum. Unde de conſilio virorum prudentium (ut dicitis) appello deferentes, cauſam ſecundum quod coram nobis agitata eſt domino Papæ tranſmiſiſtis inſtructam. De quo plurimum admirantes non immerito movemur, cum de legitimitate prædicti Nicholai per teſtium productiones & atteſtationum publicationes plene vobis conſtiterit, vos propter appellationem puellarum prædictarum, contra quas non agebatur, vel etiam de quibus nulla fiebat mentio in Aſſiſa memorata, nec fuerunt aliquæ partes illarum in cauſa prædicta, ſententiam diffinitivam pro eo diſtuliſtis pronunciare, & male, quia noſtrum declinantes examen, id quod per noſtram determinandum eſſet juriſdictionem ad alienam transferunt dignitatem, quod valde pernicioſum eſſet exemplo; cum, etiamſi adeptus eſſet prædictus Nicholaus poſſeſſionem terræ prædictæ per Aſſiſam prædictam, beneficium petitionis hæreditatis prædictis puellis plane ſuppetat in Curia noſtra per breve de recto, maxime cum per literas de morte anteceſſoris agatur de poſſeſſione, & non de proprietate, & ex officio noſtro in caſu propoſito nihil aliud ad nos pertinebat, niſi tantum de ipſius Nicholai legitimitate probationes admittere, & ipſum cum literis noſtris teſtimonialibus ad Juſtitiarios noſtros remittere. De conſilio igitur Magnatum & fidelium nobis aſſiſtentium vobis mandamus, quatenus non obſtante appellatione præmiſſa, non differatis pro eo ſententiare, ipſum ad Juſtitiarios noſtros remittentes cum literis noſtris teſtimonialibus, ut de loquela coram eis agitata poſtmodum poſſint ſecundum legem

& conſuetudinem terræ noſtræ Hiberniæ juſtitiæ plenitudinem exhibere. Teſte H. apud Gloceſter, 19. die Novembris. Vide auxy a ceſt entent 39 E. 3. 20. a. ou en briefe de Dower, Ne unques accouple en loial matrimony fuit plead, & iſſue ſur ceo joyne; q que mande fuit al Evelque de certifier; q certifie, que il ne poet riens faire p reaſon de un Inhibition que a luy vient hoxs del Arches. Ceſt returne fuit tenus inſufficient; car la eſt dit, que il ne doet ſurceaſer de faire le commandement del Roy pur nul Inhibition.

4. Darraignm̃t fuit dit, que le very cauſe & reaſon pur que le Eccleſiaſticall Judge ne poet enquire de Legitimation ou Baſtardy, devant que il ad receibe direction ou mandment hoxs del Tempoxal Court del Roy, conſiſt en ceo, que le Court Chriſtian navoit unques Juriſdiction ou power de entermeddler ove tempoxall enheritance, directe ou indirecte. Car fuit note, que Chriſt meſme refuſoit de meddler en cauſe de tiel nature, quand ſur petition fait a luy Luc. 12. Magiſter, dic fratri meo, ut dividat mecum hæreditatem, il reſpond, Quis me conſtituit judicem aut diviſorem ſuper vos? Et pur ceo en le temps del Henr. 3. quant le uſurped Juriſdiction del Pape fuit elevate plus hault que unques devant ou puis en les Dominions del Roy Dengleterre, le Pape Alexander 3. aiant graunt Commiſſion al Evelques de Winton & Exon de enquire de legitima nativitate del Agatha, mere del un Robert de Ardenna, & ſi el ſerroit trove legitimate, de reſtorer le dit Robert al poſſeſſion de certaine terres dont il fuit diſpoſſeſſe, eſteant informe que le Roy Dengleterre fuit graundment offend ove ceſt Commiſſion, il revoke & countermaund ceo en ceſt point del reſtitution de poſſeſſion, conuſant & confeſſant que le eſtabliſhment de poſſeſſions appertient al Roy, & nemy al Elgliſe. Quel Caſe eſt repoxt en le Canon Ley, Decretal. Antiquæ collectiones 1. libr. 4. titul. Qui filii ſunt legitimi, cap. 4. & cap. 7. En le 4. Chapter le Commiſſion eſt expreſſe; mes cap. 7. la revocation ou countermaundment appiert en ceſt foxme. Cauſam quæ fuit inter Fr. & R. de Ardenna, ſuper eo quod mater jam dicti R. dicitur non fuiſſe de legitimo Matrimonio nata, experientiæ noſtræ commiſimus terminandam: verum quia in literis noſtris inſeri fecimus, ut præfatum R. poſſeſſionibus quarum poſſeſſor extitit faceretis

reſtitui, ſi eadem poſſeſſione ſpoliatus eſſet, nos attendentes quod ad Regem, non ad Eccleſiam, ſpectat, de talibus poſſeſſionibus judicare, ne videamur juri & dignitatibus chariſſimi in Chriſto filii Henrici Regis Anglorum detrahere, qui, ſicut accepimus, motus eſt & turbatus quod de poſſeſſionibus ſcripſimus, cum ipſorum judicium ad ſe aſſerat pertinere, volumus quod Regi poſſeſſionum judicium relinquentes, de cauſa principali cognoſcatis, &c.

Mich'

Mich' 8 Jacobi.

Le Case del Royall Piscarie de le *Banne.*

EN le River de le Banne en Ulster, q̃ divide le Countie de Antrim de le Countie del Colrane, environ 2 leagues de la Mer, ou le streame est navigable, il y ad un rich Piscarie des Salmons, que fuit parcel del antient enheritance de la Corone, come appiert per plusors Pipe-Rolls & Surveies, ou ceo est trove en charge come severall Piscarie: mes ore ceo est grant per le Roy al Citie d̃ London en fee-ferme. Le profit de cest Piscarie per le space de 200 ans passes fuit pris & share ent̃ les Irish Seigniors, q̃ux ont fait incursion & intrusion sur les possessions del Corone in Ulster, & ont possesse p̃ fort main les territories adjoynant al dit River de le Banne, jusq̃s al prim̃ an d̃l reigne del nostre Sñr le Roy q̃ ore est.

Anno primo Jacobi, Sir Randall Mac Donel ad obtaine un Graunt a luy & ses heires per Letters patents de le Territory del Rout, q̃ est parcell del Countie de Antrim, & adjoynant al River de le Banne, in ea parte ou le dit Piscarie est, & ad tout temps estre. Per ceux Letters patents le Roy graunt a luy omnia castra, messuagia, tofta, molendina, columbaria, gardina, hortos, pomaria, terras, prata, pascua, pasturas, boscos, subboscos, reddit⁹, reversiones & servitia, piscarias, piscationes, aquas, aquarum cursus, &c. ac omnia alia hæredi-

hæreditamenta in vel infra dict' territorium de le Rout in comitatu Antrim, exceptis, & ex hac conceſſione nobis, hæredibus & ſucceſſoribus noſtris, reſervatis tribus partibus piſcationis fluminis de le Banne.

Et ſur ceſt Graunt Sir Randall Mac Donell fait petition a le Seignior Deputy, deſtre miſe en quiet poſſeſſion del quart part del dit Piſcarie, que adonques per ſpeciall Order del Councill-Table fuit miſe en ſequeſtration. Le Seignior Deputy eſteant informe per le Atturney del Roy, que nul part d ceſt Piſcarie paſſoit al Randall Mac Donell per ceſt Graunt, requiroit le Reſolution de les chiefe Judges eſteant del Priby Councill en ceſt matter; queux ſur view de pluſors Pipe-Rolls, en que ceſt Piſcarie fuit trove ſeveralment en charge, come parcell del auncient enheritance de la Corone, & ſur conſideration eu del dit Graunt fait al Sir Randall Mac Donell, certifiont lour opinion & reſolution, que nul part del dit Piſcarie paſſoit al dit Sir Randall Mac Donell per les Letters patents avantdit. Et en ceſt caſe divers points fueront conſider & reſolve.

1. Primerment, coment que le Rule del Civill Ley ſoit, q Flumina & portus publica ſunt, ideoque jus piſcandi omnibus commune eſt in portu fluminibuſque, quel Rule eſt trove en Bracton lib. 2. cap. 12. uncore per le Common Ley del Engleterre home poet aver proper & ſeverall intereſt, tibien en un eau ou river, come en un Piſcary: & pur ceo un eau poet eſtre graunt, 11 R. 2. Plo. Comment' 154. a. Si un graunt al auter aquam ſuam, le Piſcarie en ceo paſſera, pur ceo que eſt enclude in ceo parcell aqua. Et N. Br. 123. Quod permittat giſt de libera piſcaria, en tiel forme; Præcipe A. quod permittat B. habere liberam piſcariam in aqua ipſius A. in N. que monſtre que A. ad intereſt in le eau. Auxi Piſcary giſt en graunt & en tenure, & per graunt de ceo le ſoile paſſa: car 40 Edw. 3. 45. Monſtraverunt giſt d'un Piſcarie, que imply que ceo containe terre & demeſne; car autrement Diſtreſſe ne poet eſtre priſe en ceo, come eſt note Plow. Comment' 154. a. Vid. 34 Aſſ. p. 11. Graunt del Piſcarie in le River de Teſe al Abbe d Rivaux, ſalvo ſtagno molendini. Auxi Piſcarie eſt demaundable per Præcipe, N. Br. fol. 2. c. Et Aſſiſe giſt de Piſcarie, N. Br. 179. l. Car home poet aver eſtate de franktenement in Piſcary, Fitz. Aſſ. 422. Temps E. 1. in Aſſiſe

ſiſe de nuſans, le plaintiſe count que per leber de Goꝛs il eſt diſturbe de ſon Piſcarie: exception fuit pꝛis al count, p̄ ceo que nul francktenement fuit aſſigne a que le Piſcarie fuit appendant: & la eſt dit, q̄ Piſcarie eſt francktenemēt per ſoy, per que ne beſoigne de monſtrer a quel francktenement ceo eſt appendant. Vide auꝛy Fitz. Aſſiſ. 427. 12 Henr. 3. Aſſiſe de libero tenemento, & ſe plaint ó un Piſcarie, & recober. Auꝛy home poet fait̄ Bailif de ſon Piſcarie, 11 Henr. 7. 20. a. 10 Henr. 7. 24. b. Nat. Br. 88. h. vide auꝛy 23 Hen. 3. Brook Aſſ. 450. & 34 Aſſ. pl' 11. Et de proventu fluminum decimæ ſolvi debent, Linwood fol. 101. (untoꝛe Piſces non offerebantur in Templo, Tho. Aquin. 1. 2. q. 102.) Et eſt note q Linwood ſupra, qd' fluvius eſt perennis decurſus aquaꝛum, flumen verò propriè eſt ipſa aqua. Et la gloſſe ſur le Rule del Civil Ley avantdit eſt tiel, Flumen ipſum, niſi alveum mutet, ſemper in eodem loco manet; ſed aqua profluens eſt communis, quia non manet, ſed procul fugit extra ditionem ejus cujus flumen eſt, ut ad mare tandem perveniat.

2. Secondm̄t, il y ad 2 kinds de Ribers; navigable, & nient navigable. Chelcun navigable River cy hault que le Mer flow & reflow en ceo, eſt flumen regale, & le Piſcarie de ceo eſt auꝛy Piſcarie Royall, & appent al Roy per ſon Pꝛeꝛogative: mes en chelcun auter River nient navigable, & en le Piſcarie de tiel River, les Tertenants ex utraq; parte aquæ ont intereſt de common dꝛoit. Le reaſon pur que le Roy ad intereſt en tiel navigable River, cy hault que le Mer flow & reflow en ceo, eſt, pur ceo que tiel River participate del nature del Mer, & eſt dit bꝛathe del Mer tant abaunt que el flow. 22 Aſſ. p. 93. 8 E. 2. Fitz. Corone 399. Et le Mer neſt ſolement delouth le Dominion del Roy, come eſt dit 6 R. 2. Fitz. Protection 46. La mer eſt del ligeance del Roy, come de ſon Corone D'engleterre; mes eſt auꝛy ſon pꝛoper inheritance: & pur ceo le Roy abera le terre que eſt gained boꝛs del Mer, Dier 15 Eliz. 226. b. 22 Aſſ. p. 93. Auꝛy le Roy aũa les grand poiſſons del Mer, Balenas & Sturgiones, &c. queux ſont piſces regales, & nul Subject poet eux aber ſans ſpeciall graunt del Roy; Prærogativ. Regis ca. 11. Stanford 37. 38. Bracton lib. 3. ca. 3. 39 Ed. 3. 35. a. Et le Roy aũa wilde Swans, come volatilia regalia, ſur le Mer & bꝛaches de ceo. Le Caſe de Swans en le 7. part des Reꝛoꝛts

poꝛts del Seignioꝛ Coke. Iſſint Wreck del Mer eſt perquiſit royall, 5 Coke 107. Sir Henrie Conſtables Caſe. Et ſur ceſt reaſon, deuant le Statute de 18 E. 3. nul ſubiect puiſſoit paſſer ouſter le Mer ſans ſpecial licence del Roy: mes la eſt enact, que le Mer ſoit obert a touts merchants. Et touts Poꝛts & Hauens, q̄ ſont oſtia & januæ Regni, apperteinont al Roy, p̄ ceo q̄ il eſt Cuſtos totius regni: & Fit. Nat. Br. 113. a. le Roy doet de droit ſaver & defender ſon Realme, tibien vers le Mer, que vers ſes enemies. Et que le Roy ad meſme le Pꝛerogatiue & intereſt en les braches del Mer, & navigable Rivers, cy hault que le Mer flow & reflow en eux, que il ad in alto mari, eſt manifeſt per pluſoꝛs authoꝛities & Recoꝛds.

1. Le Roy, p̄ ſes Letters patents fait al graund Admirall Dengleꝛ̄, graunt a luy non ſolement Juriſdiction & power de dꝛermine maritime cauſes, mes omnia bona waviata, Flotzon, Jetzon & Lagan, ac omnia bona, mercimonia & catalla in mari deperdita, ſeu extra mare projecta, ac omnia & ſingula caſualia, tam in vel ſuper mare, vel litora, crecas, vel coſteras maris, quam in vel ſuper aquas dulces, portus, flumina, rivos, aut alia loca ſuperinundata quæcunque, infra fluxum & refluxum maris, ſeu aquæ ad plenitudinem, à quibuſcunque primis Pontibus verſus mare, per totum regnum Angliæ aut Hiberniæ, &c. emergentia, contingentia, ſeu provenientia, &c.

2. Le Commiſſion de Sewers, que fuit agard per le Roy per vertue de ſon Pꝛerogatiue Royall devant aſcun Statute fait en tiel caſe, extend non ſolement al walles & bankes del Mer, mes auxi del navigable Rivers & freſh waters; Regiſt. f. 127. a. b. N. B. 113. a. Et eſt recite en le Statute de 25 Hen. 8. cap. 10. que le Roy, per reaſon de ſon Dignity & Pꝛerogatiue Royall, doet pꝛovider q̄ navigable ſtreames ſont fait paſſable, &c.

3. Le Citie de London, per un Charter del Roy, ad le River de Thames graunt a eux: mes pur ceo que fuit conceive, que le ſoile & ground del River ne paſſoit per ceſt Gꝛaunt, ils purchaſont un auter Charter, per que le Roy graunt al eux ſolum & fundum del dit River; per force de quel Gꝛaunt, le Citie a ceſt jour receive rents de ceux queux firont Poſts, ou font Wharfes, ou auters edifices,

ſur

ſur le ſoile del dit River.

4. Enter les Pleas del Coꝛone, 40 E. 3. in Archiv. Caſtri Dublin. ceſt entry eſt trove; Domini Reges Angliæ & Domini Hiberniæ de Jure Coronæ habent per totam aquam de Boine, à Villa de Droghedagh uſque ad Trim, filum aquæ vulgariter vocatum le Watershard, continens in latitudine 24 pedes in loco profundiore ejuſdem aquæ, ita quod Batellæ, Maremium & Merchandizæ per hujuſmodi filum, hinc atque illinc, ire & redire poſſint, per filum aquæ prædictæ, abſq; impedimento, &c. Et la un Judgmēt eſt enter in meſme le Roll, que un Weare erect per le Abbe de Mellefont en le dit River ſerroit abate, & fine impoſe ſur le Abbe, &c. Et ceo agreé obe Glanvill, que dit, que un purpꝛeſture poet eſtre fait cibien in aquis Regiis quam in viis Regiis. Vid. 19 Aſſ. p. 6. que le River de Lee eſt trove per Inquiſition le hault ſtreame del Roy: & 1 & 2 Ph. & Mar. Dier 117. a. le Thames eſt appel le King's ſtream: & in l' Statute de 28 Henr. 8. c. 22. enact in ceſt Realm, les Rivers de Barrow, Noyr & Suire, ſont appell the King's Rivers, & les Weares erect en eux ſont appell Purpꝛeſtures. Et coment que le Roy permit ſon people, pur lour eaſe & commodity, de aver common paſſage ſur tiels navigable Rivers, uncoꝛe il ad ſole intereſt en le ſoile de tiels Rivers, & auxy en le Piſcarie; coment q̄ le pꝛofit de ceo neſt communement pꝛis & appꝛopꝛiate per le Roy, ſi ne ſoit de extraoꝛdinary & certaine annuall value, come ceſt Piſcarie de le Banne ad touts foits eſtre. Vid. en le Caſe de Swans 7 Coke 16. a. Le Roy Henr. 8. graunt al Strangewaies totam illam liberam piſcariam vocatam le Flæt en Abbotſbury, que eſt un Bay ou Creeke del Mer: & comēt que le Abbe ad Piſcary la devant le Diſſolution, eſt deſtre entend, que le Abbe al commencement avoit ceo per grant del Roy, eſteant un ſeverall Piſcary ſur bꝛache del Mer, & per conſequens un Piſcary Royall. Vid. Plo. Com. 31. 5. b.

Per que fuit reſolve, que le River del Banne, cy avant come le Mer flow & reflow en ceo, eſt flumen regale, & le Piſcary del Salmons la un Royall Piſcary, que appent al Roy come un ſeverall Piſcary, & nemy al ceux queux ont le ſoile ex utraque parte aquæ. Mes de auter part fuit agreé, que cheſcun Inland River nient navigable appertient al owners del ſoile ou il ad ſon courſe. 28 Aſſ. p. 93. Et ſi tiel

River courge enter 2 Mannors, & eſt le Meare & Boundary enter eux, l'un moietie del River & Piſcarie appent al un Seignior, & l'auter moietie al auter. Et ceo appiert Libr. Intrac' fol. 666. b. en treſpas quare piſcatus fuit in ſeperali piſcaria, & piſcem inde, viz. 2 Salmones, &c. cepit, &c. le Defendant dit, que il fuit ſeiſie del Mannor de B. quod ſe extendit uſque ad finem aquæ de W. quæ eſt eadem piſcaria in qua ſupponitur piſcationem prædictam fieri, ex Auſtrali parte; & que le plaintife eodem tempore quo, &c. fuit ſeiſitus de manerio de A. cum pertinentiis, quod ſe extendit ad medium fili aquæ prædictæ ex parte Boreali ejuſdem aquæ; maneriaq; prædicta ab Oriente æqua longitudine verſus Occidentem ſe extendunt: & quod ipſe le defendant, & omnes illi quorum ſtatum ipſe habet in manerio de B. à tempore quo non extat memoria, ſeiſiti fuerunt de parte Auſtrali prædictæ aquæ, ut de ſeperali piſcaria ſua, ut de parcella manerii ſui prædicti, & ſimiliter hab' communiam piſcariæ, in prædicta parte Boreali ejuſdem aquæ, dicto manerio de A. pertinentem. Le plaintife replie, quod aqua prædicta ex utraq; parte eſt ſon ſeverall Piſcary, ſans ceo que le defendant ad common de Piſcary in Boreali parte dictæ aquæ. Vid. 2 R. 2. fol. 5. a. q̃ hẽ de rationabilibus diviſis giſt de tiel Piſcary.

3. Tiercement, fuit reſolve, que nul part de ceſt Royall Piſcarie de le Banne poet paſſer per le Graunt del terr̃ adjoynant per generall graunt de touts Piſcaries: car ceſt Royal Piſcarie neſt appurtenant al terr̃, mes eſt Piſcary en gros, & parcel del enheritance del Corone aperluy. Et generall parols en Graunt del Roy ne paſſeront tiel ſpecial Royaltie que appent al Corone per Prerogative; come Mines royall, Amerciaments royall, Eſcheats royall, ne paſſeront per generall parolls de touts Mines, Amerciaments, & Eſcheats. Et a ceſt entent ſont pluſors Caſes direct en le point, en le Caſe de Mines, Plo. Comment. 333. b. 334. a. & 9 & 10 Eliz. 268, 269.

4. Darrainment fuit agrée, que ou le Roy ad graunt al Sir Randall Mac Donell tout le territorie adjoinant a ceſt River, & touts Piſcaries deins ceſt territorie, exceptis tribus partibus piſcariæ de le Banne, que le quart part de ceſt Piſcarie ne paſſera a luy per ceſt Graunt; car le Graunt del Roy ne paſſera rien per implication, 2 H. 7. 13, &c.

Ceux

Ceux points fueront reſolve en ceſt Caſe per les Rules & authorities del Common Ley. Des ouſter ceo, divers Rules del Civill Ley, & cuſtumary Ley del Fraunce, agreable al noſtre Ley en ceſt point, fueront cite hors de Renatus Choppinus, un treſbone autheur, en ſon Tractate de Domanio Franciæ, lib. 1. titul. 16. de fluminibus. Fluminum ſunt duo genera, dit il, Regalia quædam, alia Bannalia, ſive privata. Regalia dicuntur, ex quibus Princeps jure patrimoniali vectigal capit, & in quibus modum & tempus piſcationis conſtituit. Vid. Stat. W. 2. c. 47. Et non ſolum regalia flumina nuncupantur, quod Regum dominio ſunt attributa, ſed etiam quod eorum curam ſibi Reges ac Principes aſſumpſerunt; nec non ex eo, quod piſcarias, cæteroſque publicorum fluminum redditus, qui ærarii publici fuere, in fiſcum ſuum redegerunt. Sunt & lacus publici regales, fluviorum ſuperiorum inſtar: nam lacus publicos locant, & vectigalia in fiſcum ſuum referunt: ideoque publicano, qui lacum vel ſtagnum conduxit, ſi piſcari prohibeatur, utile interdictum competit. Juſtiſſimum enim eſt, ob vectigalis favorem, interdicto eum tueri. Et quant al auters rivers queux courge per confinium prædiorum, il dit que per preſcription, ou permiſſion des Princes, aut alio juſto titulo, omnia talia flumina facta ſunt privata, quæ natura publica erant; & quod piſcatio in certa parte fluvii poteſt ex pacto conſtitui, vel continenti multorum annorum uſu acquiri: & ſic potentiores amnis accolæ, ſi pluribus annis ſoli piſcati ſunt, cæteros pari jure uti prohibent; quamvis Mari, quod natura omnibus patet, ſervitus imponi privatorum cautione non poteſt. Et ouſter il monſtre que les auntient Roys de France piſcationi in fluminibus publicis modum præſcripſerunt, & piſcarias, ac reliquos fluminum proventus, qui ærario publico olim aſcribebantur, paſſim in fiſcum ſuum retulerunt. Pur le Prerogative del Roy deins le Mer, il cite un verſe de Juvenal,

Quicquid conſpicuum pulchrumque ex æquore toto eſt,
Res fiſci eſt, ubicunque natat. Et Cujacius, de Feodis f. 205. a. fuit auxy cite, ou il dit, Regalia ſunt viæ publicæ, flumina navigabilia, & ex quibus fiunt navigabilia, portus, vectigalia, monetæ, &c.

Trin. 9 Jacobi.

En le Eſchequer.

Le Caſe del Countie Palatine de *Wexford.*

FUit trove per offic̃ en l' County ỏ Wexford, q̃ un Prendergraſt, anno 27 H. 8. fuit ſeiſie en ſ̃e ỏ c̃taine terr̃ en le dit County, & ceo teignoit ỏl George donq̃s Countẽ de Salop & Waterford, & Seignior ỏ Wexford, ut de perſona dicti Comitis exiſten' Comit. Palatin. Comitatus Wexford.

Fuit trove ouſter, q̃ per l'Eſtatute de 28 H. 8. ca. 3. q̃ eſt entitle Le Stat. de Abſentees, fuit Enact, q̃ l' Roy H. 8. ſes heirs & Succeſſors, averont & enjoieront come en droit ỏl Coronę Dengleterr̃ touts honors, Mannors, Caſtles, Seigniories, Franchiſes, Liberties, Counties Palatine, Juriſdiciõs, Fees ỏ Chivaler, Advowſons, &c. q̃ux l' dit Countẽ ỏ Salop avoit deins l' Realm ỏ Ireland. Apres q̃ le dit Prendergraſt morust ſeiſie ỏ ceſt tre, ſon heire eſteant ỏ plein age.

Et ſi ore, ſur ceſt office, l' tre ſerra ſeiſie en mains ỏl Roy p̃ primer ſeiſin, fuit l' q̃ſtion. Et ſur ceo un Point ſoleñt fuit cõſider, viz. ſi le heire del dit Prendergraſt tiendra ỏl Roy in Capite, ou per q̃l tenur̃ il tiendra le dit terr̃. Et fuit reſolve, que ore il tiendra ceſt terre del Roy in Capite.

Wes

MEs fuit object p̄ l' Counſell ōl Prendergraſt, q̄ l' tenure q̄ ē trove p̄ l' office ne ſerra oꝛe un tenur̄ del Roy in Capite, mes tenur̄ en coñon Socage per fealty tantum, p̄ 3 reaſons.

1. Tenure in Capite tobient eſtre ab antiquo de Corona, come eſt expreſſe en l' Stat. ō Prærogativa Regis, cap. 1. Et eſt dit 30 H. 8. Dier 44. a. que tenure en chief cōmenceoit en auntient temps ſur grants del Roy p̄ defence de ſon perſon e ſa Coꝛone: mes ceſt tenure eſt nobelment ōvenus al Roy H. 8. per l' Act de Abſentees, e p̄ ceo ne poet eſtre tenure del Roy in Capite.

2. Tenure in Capite eſt touts foits tenure de perſon del Roy, N. Br. fol. 5. Et eſt de cy hault nature, q̄ nul home poet creat̄ ceo, ou aver ceo, forſq̄ l' Roy meſme. Car nul ſubject eſt able de reverſer tiel tenure, ou capable del grant de tiel tenure. Car ſi l' Pꝛince, l' eigne fits del Roy, devant l' Statute de Quia emptores terrarum, ad fait feoffāt de terre, a tener de ſon perſon, ceo ne ſerroit tenure in Capite. Come eſt tenus 30 H. 8. Dier 44. b. Et ou le Tenant de un auntient honoꝛ, come Berkhamſted, teignoit del Roy in Capite, comēt q̄ le Roy grant l' dit honoꝛ al Pꝛince, e a ſes heires Roys Dengleterre, uncoꝛe l' Pꝛince navera l' pꝛogative del Capite tenure en ceſt caſe durant le vie del Roy, 21 Edward. 3. 41. b.

3. Nul tenure create per Subject, coment que ſoit tenure en gros de ſon perſon, (car ſubject poet aver tenure en gros de ſon perſon, 8 Henr. 4. 1. 19 Edw. 4. 9. 13 El. Dier 290. b.) poet per alcun poſſibilitie grow ou alpire d'eſtre un tenure in Capite del Roy. Et pur ceo, ſi le Pꝛince, ou auter ſubject, create tiel tenure de ſon perſon, e apꝛes eſt fait Roy, ceo ne devient tenure en chiefe. Et ſi le Roy vient al Seignioꝛie en gros per attainder de un Subject de felony, ou per common Eſcheat, ou per deſcent, ou per purchaſe, le Tenant ne tiendꝛa de luy in Capite, mes come il teignoit devant, 30 H. 8. Dier 44. b. Iſſint ſi le Roy purchaſe un Manoꝛ de que I. S. eſt tenant, ſi le Roy graunt le Mannoꝛ al auter, reſervant les ſervices de I. S. oꝛe I. S. tient del perſon del Roy, car les ſervices ſont en groſſe, uncoꝛe il ne tiendꝛa in Capite, 29 Hen. 8. Br. Tenures 61. & Br. Livery 57. Et le Caſe 17 Eliz. Dier 345. a. ſemble plus foꝛt

ſoꝛt que le Caſe en queſtion. Car la fuit trove devant l' eſcheatoꝛ ỏ Carnarvan, que certain terre en Gales fuit antientment tenus del Pꝛince de Gales, per le ſervice de aler en guerre del Pꝛince a les charges del Pꝛince, & que un Owen ap David teignoit la dit terre ỏl Roigne Elizabeth come de ſa Pꝛincipalitie de Gales in Capite : uncoꝛe fuit tenus p Counſell del Court de Wards nul Tenure in Capite. Vide le Stat. de Magna Charta ca. 32. & le libꝛe de 28 Hen. 6. fol. 11. b. a ceſt purpoſe.

Mes de auter part fuit argue per le Counſell del Roy, & reſolve per Sir Jo. Denham Chief Baron & tout le Court, que ceſt tenure, come ceo eſt trove, eſt tenure del Roy in Capite. Et en le Argument de ceſt Point plus alarge 2 choſes fueront pꝛincipalment conſider : 1. le Oꝛiginall & nature de County Palatine ; 2. le nature & qualitie del Tenure in Capite.

1. ET p̄ le pꝛimer, fuit pꝛimerment obſerve, que Comes, ou Countee, eſt un noſme ou title del honoꝛ, & dicitur à comitando vel ſequendo Principem : & ceux perſons queux fueront advance a ceſt title fueront Summi Proceres, & à Rege proximi, come Caſſanæus in Catalogo gloriæ Mundi dit. Et ceſt noſme ou title de honoꝛ fuit ab initio accompanie ove un honoꝛable office. Car ceſty que fuit Comes ad un teꝛritoꝛie aſſigne a luy, p̄ garder & governoꝛ ; q̄ fuit appel Comitatus. Ceſt title ne commenceoit deſtre frequent tanque le declination del Roman Empire, ceſtaſcavoir en le temps del Charlemaine, que oꝛdaine & inſtitute divers Countées in Germany, Italy & France, & done a eux non ſolement un abſolute commaund in Martiall affaires deins lour ſeveral Teꝛritoꝛies, mes auxi oꝛdinary Juriſdiction in civill & criminall cauſes : & p̄ ceo eſt dit en le Imperiall Law, quod Comes eſt Judex ordinarius : & Grave en Dutch ſignifie un Judge, civien que un Earle.

Mes ceux Countées ne fueront touts de equall degrée : car fueront de 2 ſoꝛts, viz. Comites ſimplices, & Comites Palatini, ou del pꝛimer & ſecond oꝛder. Car coment que Comites ſimplices avoient tiel commaund & Juriſdiction come avant eſt monſtre, uncoꝛe Comites Palatini fueront de plus hault rank, & avoent divers Royall Franchiſes & pꝛivileges, que ne fueront graunt al ſimple Countées.

Ceſt

Ceſt noſme & office de Countee fuit introduce en Engleterr̄ hors del Germany per les Saxons, long temps devant l' Norman Conqueſt, Mittons Caſe, 4 Coke 34. & le Retorn de Domeſday prove ceo, que fait mention de ſeveral Counties en Engleterr̄. Mes le prīmer County Palatine, viz. l' County Palatine de Cheſter, fuit erect en temps de William le Conqueror, Camden 464.

Pur le noſme del Countee en noſtre Ley, certes ceo eſt le plus auntient noſme de dignitie & honor, & devant le temps del Edw. 3. fuit le ſole noſme de dignitie & honor en Engleterre. Car le noſme & title de Duke, Marquis, & Vicount ſont de puiſne temps: car le prīmer Duke fuit create en temps Edw. 3. le prīmer Marquis en temps R. 2. & le prīmer Viſcount en temps Henr. 6. & le noſme ou title de Baron neſt noſme de dignitie ne addition, 8 Henr. 6. 10. a. le Seigniour Lovells Caſe. Mes Countee eſt parcell del noſme, & del ſubſtance del noſme; & ſi ſoit omitt en Briefe, le Briefe abatera: 39 Edw. 3. 35. le Caſe del Gilbert Umfrevill Countee de Angus, & 14 Edw. 3, Briefe 278. le Caſe de Hugh de Audley Countee de Gloceſter. Et ceſt title de Countee eſt inſtar cognominis, & ne beſoign de uſer auꝰ ſurnoſm: cõe ſi Action ſoit port vers Jo. Countee de Oxford ſans auter ſurnoſme, eſt ſufficient, 7 H. 6. 27. 12 E. 3. Briefe 454. Auxy ceſt titl' neſt merge ou confounded per title de Duke: car ſi Countee ſoit fait Duke pendant l' briefe, ceo ne abata l' briefe. Come ou l' Countee de Lancaſter fuit fait Duke de Lancaſter 25 E. 3. 39. Briefe 409. Iſſint ou Action fuit port vers Countee de Richmond, il plead q̄ il fuit Duke de Brittain, & non allocat', 11 E. 3. Br. 473.

Pur le Office del ſimple ou ordinarie Countee per noſtre Ley, il avoit cuſtodiam comitatus, & auctoritie de raiſer poſſe comitatus a ſuppreſſer rebellions & riotts, &c. que fuit un Martiall commaund: il avoit auxy Juriſdiction en civile & criminall cauſes, & a ceſt entent il avoit 2 Courts, 1. ſon Turne ou View p̄ criminall cauſes, 2. le County Court p̄ civill cauſes. Le prim̄ fuit le Court del Roy, car Pleas del Coron ne poent eſtre tenus en alcun Court forſque en Court del Roy: le ſecond fuit le Court del Countee meſme, & pur ceo eſt appell le County Court. Mes pur ceo que il fuit auxy immediate Officer al Court del Roy, pur faire

faire execution ôl brieſes ôl Roy, & le Comes ou Countee meſme comitabatur Principem, & fuit p̄ le plus part attēdant ſur luy, ou en ſon Councill, ou en ſes guerres, le Roy ſeſoit un Lieutenant ou Deputie a luy, come Fineux dit, 12 Henr. 7. 17. b. ceſtaſcavoire, le Viſcount, q̄ ore execute meſme le office en touts points. Et eſt deſſ̄ note, q̄ en touts Counties que ſont ſimple Counties, & ſubject al ordinary juriſdiction del Courts del Roy, le Roy meſme fait le Viſcount; mes deins Counties Palatine, ou le Countée ad jura Regalia, le Countée meſme, & nemy le Roy, fait le Viſcount. 12 H. 7. 17. & 18. & 4 Coke 33. Mittons Caſe. 22 E. 4. 22. Et tout ceo fuit note ſur le originall ôl Countee en geñal, & ſur le noſme & office del Ordinarie Countee.

PUr l'originall, noſme & p̄rogative del Countee Palatine; que fuit un extraordinarie Countee, 1. fuit note & obſerve, que fuit appel Palatious, vel Comes Palatii, p̄ ceo que il fuit un chiefe Officer & Counſellor en l' Palace del Emperor; & eſt dit q̄ il ne fuit ſoleñt Companion del Perſon del Prince, mes comes curarum. Par extans curis, ſolo diademate diſpar. Et pur ceſt reaſon, le Prince cōmunicate a luy pluſors de ſes Royall Prerogatives. 2. Fuit obſerve, que ceſt honor de County Palatine fuit primerment inſtitute per l'Emperor apres que le Empire fuit tranſlate al Germany. Et pur ceo les Doctors del Imperiall Ley teignont, Quod ſolus Princeps qui eſt Monarcha & Imperator in Regno ſuo, ex plenitudine poteſtatis, poteſt creare Comitem Palatinum. Baldus tit' Reſcript. 6. De precibus Imperatori offerendis.

FUit auſi reſolve, que accordant a ceſt Rule, le Roy del Engleterre poet bien creater un Countée Palatine: car il eſt Monarcha & Imperator in regno ſuo; come eſt apparant per pluſors Records, & Judgements en Parliament.

En le Preface del Seignior Coke al quart part de ſes Reports, un auncient Charter del Roy Edgar, que recite le ſtile del Roy, eſt tiel, Ego Edgarus Anglorum Baſileus, omnium Inſularum Oceani quæ Britanniam circum jacent, cunctarumque nationum quæ infra eam includuntur, Imperator & Dominus, &c.

Et

Et a cest entent Matth. Paris, in Historia majori, fol. 17. a. dit, que quant un difference surdoit perenter le Roy William Rufus & Anselme Archevesq; de Canterbury touchant le Jurisdiction del Pape en Engleterre, Rex Willielmus allegavit, quod spectabat ad officium Imperatoris, quem vellet Papam eligere; & ob eandem rationem, quod nullus Archiepiscopus vel Episcopus Regni sui Curiæ Romanæ vel Papæ subesset; præcipue cum ipse omnes libertates haberet in Regno suo quas Imperator vindicabat in Imperio.

Per le Statute d 28 H. 8. cap. 2. enact en cest Realme, est declare, que les Roys de Engleterre are lawfull Kings and Emperours of the said Realm of England, and of this Land of Ireland.

Issint per le Act de 16 Rich. 2. cap. 5. communement appel le Statut de Præmunire, est auxy declare, That the Crown of England hath ever been so free, as that it hath been subject to none, but immediately unto God: & per le Statut de 25 H. 8. enact en Engleterre, & establish en cest Realme, 28 Henr. 8. cap. 20. ou est recite que les Realmes de Engleterre & de Ireland, recognising no Superiour under God but onely the King, have been, and yet are, free from subjection to any man's Laws, but onely to such as have been made and ordained within the said Realms, &c.

Darrainment, la Corone Dengleterre en plusors auts Acts de Parliament est appell Imperiall Crown, & la Corone de Ireland est appendant a ceo, 28 Henr. 8. cap. 20. & unite & knit al Imperiall Corone Dengleterre, 33 H. 1. cap. 1. Car coment que Britany fuit unfoits subject al Empire de Rome, que Ireland ne fuit unques; uncore ceo fuit abandon & tout ousterment relinquish per le Emperour de Rome Anno Domini 428. & quant ceo fuit apres reduce al Monarchy, tiel Monarcha fuit, & uncore est, un absolute Emperour: accordant a ceo q̃ Cassanæus in Catalogo gloriæ Mundi dit, Reges absoluti habent Imperium, & dici possunt Imperatores. Et il cite le Text, 1 Regum cap. 8. Hoc erit jus Regis qui imperaturus est vobis. Auxy il dit, Rex Angliæ est absolutus Monarcha in Regno suo. Et pur ceo le Roy Dengleterre, esteant un Emperour deins ses Dominions, poet accordant al Rule avantdit creare Comitem Palatinum.

Et ſicome le Roy Dengleterre ad abſolute power de creater Countés Palatine, iſſint il ad create pluſors Countées Palatines en ambideux Realmes. 1. En Englettre, le County Palatine de Cheſter fuit create en temps del William le Conquerour, Camden fol. 464. Et Matt. Paris Hiſtor. magn. 406. appel le Countée de Cheſter, Comes Palatii. 2. Le County Palatine de Durham, qui ſtatim à tempore Conqueſtus Comitatus Palatinus judicatus eſt, Camden fol. 600. Mes le common opinion eſt, q̃ R. 1. create le Ebeſque Pudſey le primer Countée Palatine de Durham. 3. Le County Palatine de Lancaſter, q̃ fuit ereas en temps Edw. 3. Plow. Comment. 215. b. Et ceux 3 Counties tantſolement ont eſtre Counties Palatines en Engleterre. Car Ely, coment que fuit un Liberty & aver conuſans de touts Cauſes ſecular, graunt per le Roy Edgar, appel Saint Etheldreds Liberty, ne fuit unques County Palatine: & les Seigniors Marchers ſur les Marches de Gales, coment que ils avoent Royall Seigniories en lour ſeverall Territories, 19 Henr. 6. 12. & 152. 11 H. 4. 40. uncore nul deux avoit touts les privileges del Countée Palatine.

En Ireland 3 Palatinates fueront creat en temps H. 2. le primer en Leimſter, que fuit grant al Countée Strongbow per tout ceſt Province; le ſecond en Meth, graunt al Sir Hugh de Lacy le eigne; le tierce en Ulſter, graunt al Sir Hugh de Lacy le puiſne. Mes apres quant William le Marſhall Dengleterre, aiant marrie le file & heire de Strongbow, ad iſſue 5 fitz & 5 files, & le 5 fits eſteant morts ſauns iſſue, le Seigniorie de Leimſter diſcendoit a les 5 files, ſur partition fait enter eux, cheſcun ad entire Countie allotte a ſuy, viz. le Countie de Catherlaugh fuit allot al eigne, le Countie de Wexford al ſecond, le County de Kilkenny al tierce, le County de Kildare al quart, le Territorie de Leix, que eſt ore le Queen's Countie, al cinquelme: & ſur ceo cheſcun de eux ad un ſeverall Countie Palatine, & touts les liberties & prerogatives en ſa ſeverall purparty, come Strongbow & le Marſhall avoent en le entier Seigniorie de Leimſter. Come ſi 3 parceners ſont dun Mannor queux font partition, cheſcun deux avera Mannor & Court-Baron deins ſa purpartie, 26 Henr. 8. 4. Il y avoit auxy certaine Royall libertie deins le County de Kerry & Deſmond graunt

per

per Ed. 1. al Thomas Fitz-Anthony; & autiel en Countie de Tipperary graunt al Counte de Ormond 2 Ed. 3. q ſolement continue a ceſt jour, ou touts les auters ſont reſume ou extinguiſh.

AUxy chelcun Counte Palatine create per le Roy Dengleterre eſt Seignior del un entire County, & ad en ceo jura regalia, quæ jura regalia conſiſtont en 2 principall points; viz. en Royall Juriſdiction, & en Royall Seigniorie. Per reaſon de ſon Royall Juriſdiction, il ad touts les hault Courts & Officers de Juſtice que le Roy ad: & per reaſon de ſon Royal Seigniory, il ad touts les royall Services & royall Eſcheats que le Roy ad. Et pur ceo ceſt County eſt merement diſjoyne & ſeparate del Coron, come eſt dit en le Caſe del Dutchie, Plow. 215. b. Iſſint que nul briefe del Roy courge la, forſq; briefe de Error, que, eſtant le derner reſore & appeale, eſt ſolement except hors de touts lour Charters, 15 Eliz. Dier 321. & 345. & 34 H. 6. 42. Iſſint en Ireland, que eſt Realm aperluy, erroneous judgement done en le chief place la, ſerra revers en Bank le Roy en Engleterre. Et Bracton lib. 3. titul' de Corona cap. 8. dit, quod Comites Palatini regalem habent poteſtatem in omnibus, ſalvo dominio Domino Regi ſicut Principi.

1. Le royall Juriſdiction de Counte Palatine appiert en le Chart del Edw. 3. graunt per authority de Parliament, per que le Palatinate de Lancaſter eſt erect: ou le Roy graunt al John de G. Duke de Lancaſter, quod habeat infra Comitatum Lancaſtriæ Cancellariam ſuam, ac brevia ſua, ſub ſigillo ſuo pro officio Cancellariæ deputando conſignanda, Juſticiarios ſuos, tam ad placita Coronæ, quam ad quæcunque alia placita communem legem tangentia, tenend. ac cognitiones eorundem, & quaſcunque executiones per brevia ſua & miniſtros ſuos ibidem faciend. & quæcunque alia libertates & jura regalia ad Comitatum Palatinum pertinentia, adeo libere & integre, ſicut Comes Ceſtriæ infra eundem Comitatum Ceſtriæ dignoſcitur obtinere, &c. Ceſt Charter de Lancaſter ad relation al royal Liberties del County Palatine de Cheſter, que aboit meſme les Courts & Juriſdiction, coment que le Charter de Will. le Conquerour, que fait Hugh Lupus le primer Counte de Cheſter, ſoit generall, viz. ſaver & teſt

tout ceſt Countie a luy & a ceſt heires, ita libere ad gladium ſicut ipſe Rex tenebat Angliam ad Coronam. Ceſt auntient Grant per auntient allowance done touts les Liberties & Prerogatives del County Palatine: & illint le Counte ad royall Juriſdiction la, coment que les Courts del hault Juſtice ne ſont expreſſe en le dit Chark. Et ſur ceſt reaſon, come ſemble, eſt dit 12 Edw. 4. 16. q̄ le County Palatine de Lancaſter fuit per Parliament tempore Ed. 3. mes Cheſter & Durham ſont per preſcription. Mes ceo neſt deſtre entend mérement per preſcription, car nul Franchiſe que ſe exaltat in Prærogativam Regis poet eſtre gaine per Preſcription, 1 Henr. 7. 23. b. mes p̄ ceo que tiels generall parols en les auntient Grants per uſage & allowance donont royall juriſdiction, ou tiels Grants a ceſt jour ne paſſeront cy hault liberties, 1 Henr. 7. 13. b. Vide lib. Intrac' 419. a. ou eſt plead que Cheſter fuit County Palatine per preſcriptiõ, & ỏmurrer ſur ceſt plea.

Mes que Cheſter & Durham fuer Counties Palatine, & ont touts les Courts de Juſtice, & meſme le Juriſdiction royall que eſt particularment graunt al Duke ỏ Lancaſter per le Charter de Ed. 3. eſt apparent per pluſours authorities. Pur Cheſter, 22 E. 4. Fitz. Juriſdiction 61. 34 Hen. 6. 42. 19 E. 3. Fitz. Juriſdiction 29. 15 Eliz. Dier 321. a. b. Pur Durham, 5 E. 3. 58. Fitz. Juriſdiction 30. ou eſt dit q̄ l' County Palatine de Durham ad ſes Juſtices & Chauncerie demeſne; 1 E. 4. 10. 45 E. 3. 17. 5 E. 2. Fitz. Quare impedit 165. 12 Eliz. Dier 288. Per que eſt manifeſt, que touts le Counties Palatine en Engleterre avoent royal Juriſdiction deins lour Territories.

2. Ils avoent auxy un royall Seigniorie, que conſiſtoit en 2 points; 1. en Royall Services, 2. en Royall Eſcheats. Quant al Royall Services, ils avoent power ỏ creat Tenures in capite de eux meſmes, & auxy per graund ſerjeanty. Car ils avoent power de creat Barons: come le primer Counte de Cheſter immediatm̄t ſur ſon creation ſubſtituit Barones, viz. le Baron de Haulton, le Baron de Malbanke, le Baron de Malpas, le Baron de Kindreton, &c. Camden Cheſhire 464. Et illint les auters Palatines avoent tiels Barons deins lour Counties; come l' Baron de Walton en Lancaſter, & l' Baron Hilton en le Biſhoprycke. Et chelcun Barony eſt tenus

per

per graund Serjeanty, 2 Coke le Seignior Cromwells Caſe, 81. a. Et ceſt capite tenure del County Palatine eſt accompanie ove les Prerogatives que ſont incident al tenure in Capite del Roy: car le heire ſuera Liverie hors del Chauncerie del Seignior & ſil enter devant Livery, il ſerra adjudge entrudor, & rendra les meane profits, &c. & auxy paiera fine pur alienation, 14 Hen. 4. fol. 5. & 6. & 26 Hen. 8. 9. De ſre tenus deins le County de Lancaſter Liverie ſerra ſue, car le Duke la ad jura Regalia, 28 Hen. 8. Br' tit. Liverie 55. Livery ſerra de ſre en le Countie de Lancaſter parcel del Duchie, contra de terres hors del Countie, 13 Eliz. Dier fol. 303. a. Office trove per commiſſion hors del Chancery al Weſtm. del ter̃ tenus in capite del County Palatine de Cheſter eſt void: mes ter̃ trove p cõmiſſion hors del Chancery in l'Eſchequer la, 19 Eliz. Dier 359. b. James Manley tenuit de Arthuro Principe ut Comite Ceſtriæ, & avoit Livery fait a luy, que fuit imperfect & void en Ley, per que il enter, & fuit tenus intrudor ſur poſſeſſion del Roy, apres le mort de Prince Arthur.

Quant al Royall Eſcheats, le Countie Palatine avoit les Eſcheats de Treaſons, que le Roy per ſon Prerogative avera de terres tenus de touts auters Seigniors: mes ceo eſt deſire entend des Treaſons que ſueront al temps quant le County Palatine fuit erect, & nemy de novell Treaſons per Act de Parliament apres, 12 Elizab. Dier 288. b. 289. a.

Et ſicome chelcun Countie Palatine en Engletre avoit tiel Royall Juriſdiction & tiel Royall Seigniorie, come appiert p les authorities devant miſes; iſſint chelcun Countie Palatine en Ireland avoit meſme les prerogatives, come appiert per pluſors Records de ceſt Realme.

PAr le Seigniorie de Leimſter, dont le Countie de Wexford fuit parcell, le Countie Strongbow aiant gaine ceo cibien per conqueſt, que per marriage del file & heire de Mac Morough Prince de Leimſter, ſurrender tout le dit Territorie al Roy Henr. 2. & repriſt Graunt del Roy de tout que il ad ſurrender, forſque del Citie de Dublin cum Cantredis adjacentibus, ac Villis maritimis & Caſtris: de quel Surrender & Graunt Giraldus Cambrenſis fait mention,

tion, libro primo de Hibernia expugnata cap. 28. Et coment que ceſt Original graunt neſt trove de Record icy, uncore eſt manifeſt per pluſors Records, que William le Marſhall Counte de Pembroke, que marriot la file & heir de Strongbow, & ſes 5 fits ſucceſſivement, & apres ſes 5 files Coparceners en lour ſeveral purparties de ceſt graund Seignior, aboent jura regalia tibien en point de Juriſdiction, que en point de Seignior.

Le Charter de Callan, un Vill en le County de Kilkenny, dat. 20. Martii 20 Ed. 3. prove ceo expreſſement, que fuit monſtre avant, en ceſt forme, Lionellus Dux Clarentiæ, Radulphus Comes Stafford, & Anna la Diſpenſer, domini Libertatis de Kilkenny, omnibus ad quos præſentes literæ pervenerint ſalutem. Inſpeximus Chartam Will. Mareſchalli Comitis Pembroke, domini Lageniæ, Burgenſibus villæ de Callan, non raſam, non abolitam, nec in aliquo viciatam, ſub hac forma, viz. Sciatis quod ego Willielmus Mareſchallus Comes Pembroke, &c. conceſſi Burgenſibus meis de Callan omnimodas libertates quas decet Burgenſes habere, & mihi licet conferre: viz. qd' nullus Burgenſis trahatur in cauſam, vel reſpondeat de ullo placito quod proveniat infra metas Burgi, in Caſtello vel alibi, niſi in Hundredo villæ, exceptis placitis quæ ſunt de hominibus hoſpitii mei: conceſſi etiam eiſdem Burgenſibus matrimonium contrahere ſibi, & filiis, & filiabus, & viduis, ſine licentia dominorum ſuorum, niſi forte forinſeca tenementa tenuerint de me in Capite extra Burgum, &c.

Auxy le Charter d nova Roſſe, aliàs Roſſe pontis, en le Countie de Wexford, grant al dit Vil per Roger le Bigod Counte d Northfolke, que marriot la file eigne del William le Marſhal, ad meſme les clauſes, come appiert per le enrolment de ceo en le Chauncerie icy. Et ceux Charters fueront monſtres a prover que le Seignior de Leimſter avoit Tenures in capite, & per conſequence un Royall Seignior deins ceſt Territorie.

Et a prover auxi que il avoit Royall Juriſdiction, que eſt aut marke de Countie Palatine, 2 auters Charters fueront produce. 1. Fuit Inſpeximus, portant date 1 Henr. 4. en tiel forme; Inſpeximus quaſdam libertates, uſus & conſuetudines per Burgenſes villæ de Kilkenny in eadem villa habitos & uſitatos, ac inter cæteras libertates, eas per Chartas Willielmi Mareſchalli

reſchalli quondam Comitis Pembroke conceſſas, & ſub magno ſigillo, quo domini libertatis regalis de Kilkenny in Cancellaria ſua ibidem dudum utebantur, conſignatas, & coram nobis in Cancellaria noſtra oſtenſas, in hæc verba, &c. Per q̄ appiert que il avoit hault Court de Chauncery, & graund Seale, que eſt un certaine argument que il avoit Juriſdiction royall en touts auters points, come les Countes Palatines en Engleterre.

Et a ceſt entent fuit auſi monſtre le Charter de foundation del Abbey de Duſque, en meſme le County de Kilkenny, per que le dit William le Marſhall ad done al dit Meaſon divers Franchiſes & Liberties, Et quod habeant ſibi omnimodam forisfacturam hominum ſuorum; ſola juſtitia vitæ & membrorum mihi & hæredibus meis retenta. Queux parols monſtront que il avoit power de exerciſer hault juſtice en capitall cauſes, ou pleas del Coron, que eſt auter manifeſt proofe de royall Juriſdiction.

Et coment q̄ ceux Records parlont tantſolement del County de Kilkenny; uncore eſt bien prove per eux, que le Seignior de Leimſter ad meſme les prerogatives en le County de Wexford; car il avoit lorſque un entier Palatinate per tout le Territorie de Leimſter, dont Wexford eſt parcell, tanque le partition avantdit fuit fait.

Mes a prover exprefſement, que le Seignior de Wexford, apres le partition fait, avoit jura Regalia deins ſon ſell County, le Statute de Abſentees 28 Henr. 8. c. 3. fuit monſtre, per que le Seigniory de Catherlaugh, que fuit le enheritance del Duke de Northfolk, & le Seigniory de Wexford, que fuit le enheritance del Counte de Salop, fueront reſume & veſt en la Coron: car en le Preamble del Act eſt recite, que les dits Seigniories en dits ſeverall Counties avoent power de tener touts manner de pleas, iſſint que les briefes del Roy ne courgeont pas la; & en le corps del Act, touts Counties Palatine & Royall Juriſdictions ſont per exprefſe parolls reſume. Et un auter Act fait en meſme le Parliament de 28 H. 8. c. 24. nient printed, fuit auſi produce, per que le Royall Libertie de Wexford, eſteant extinct per le dit Act de Abſentees, fuit revive en touts points, forſque en le power de graunter Pardons, & ove Proviſo, que ſerra loiall al Juſtices de Common Banke al

Dublin

Dublin de tener plea sur briefe de Entry en le post, & accepter conusans des fines des ascuns terres deins le County de Wexford. Et plusors auts Records fueront monstr̄ avant, per que fuit manifest que Wexford fuit un absolute Countie Palatine, & per consequence le Seignior la avoet cibien un royall Seigniorie que un royall Jurisdiction. Vid. les Plea-Rolls d̄l Exchequer 3 E. 3. in Breminghams Tower, ou Adam le Rous & sa feme pleadont licence de alienation de terres tenus de Seignior de Wexford, quant le dit Seigniorie fuit en mains del Roy. Vid. auxy in Archiv. Turris London le Liverie fait al Laurence Hastings Countée de Pembroke & Seignior de Wexford de touts ses terres en cest Realme, en que son County Palatine & jura Regalia sont specialment expresse & mention.

ET a prover cest point plus pleinement, divers auters Records fueront monstre, per queux fuit manifest que les auters Countées Palatine avant mention en cest Realm avoent mesme les Prerogatives del Seigniorie & Jurisdiction royall. 1. Come le Seigniorie de Meth, que coment que fuit graunt per Henr. 2. al Sir Hugh de Lacy en generall parols en cest forme, viz. Henricus Rex, &c. Sciatis me dedisse & concessisse Hugoni de Lacy, pro servitio suo, terram in Midia, cum omnibus pertinentiis suis, per servitia quinquaginta militum, sibi & hæredibus suis, tenend. & habendam à me & hæredibus meis, sicut Murchardus O Melaghlin (que fuit le Irish Roy de Meth devant le conquest) eam tenuit, vel aliquis alius ante illum, vel postea. Quare volo & firmiter præcipio, quod ipse Hugo & hæredes sui post eum infra prædictam terram habeant omnes libertates & liberas consuetudines quas ibi habeo, vel illi dare possum, &c. quel Charter fuit enroll en le Court del Common Pleas 1 Ed. 2. al petition de Geff. de Genevil, q̄ avoit marrie un des coparceñs de cest Territorie, & est ore trove enter les Records de Breminghams Tower; uncore les Seigniors de cest territorie, tanque cest Seigniorie descendoit al Roy Ed. 4. ont eu jura Regalia la, come l' Countée Palatine d̄ Chester, q̄ avoit auxy son Palatinate graunt a luy per general parols, come devant est monstre, cibien en point de Seigniorie, q̄ en point de Jurisdiction.

Et

Et a prober ceo le Charter de Geff. de Genevil avantdit facta magnatibus ſuis Midiæ fuit monſtre, eſteant regiſtred en le Lieger-booke de Triſternagh en ceux parols: Sciant præſentes & futuri, quod ego G. de Genevill, auditis & intellectis chartis & munimentis magnatum meorum Midiæ, & anteceſſorum ſuorum, ipſorum viz. qui cum Hugone de Lacy ſeniore ad conqueſtum ſuum primo venerunt in Hiberniam, ſimiliter & eorum qui de Waltero de Lacy filio & hærede dicti Hugonis ſunt feoffati, per aſſenſum & conſenſum Matildæ de Lacy uxoris meæ, conceſſi & hac præſenti Charta confirmavi, pro me & prædicta Matilda, & hæredibus prædictæ Matildæ, magnatibus ſupradictis & hæredibus eorum, placitum Namii vetiti de omnibus tenentibus in eorum terris in curiis ſuis terminare; & ſi per aliquem dictorum magnatum placitum de vetito Namio moveatur per querelam alterius magnatis qui de nobis tenet in capite, in Curia mea, vel prædictæ Matildæ, vel hæredum prædictæ Matildæ, hujuſmodi placitum ibidem terminetur. Præterea, ſi in terris dictorum magnatum Hoteſium levari contingat vel clamor, Vicecomes de Trim inquiſitionem capiat, utrum tales tranſgreſſiones ſpectant ad Coronam vel non: & ſi tranſgreſſiones illæ ſpectant ad Coronam, in Curia mea, vel dictæ Matildæ, vel hæredum dictæ Matildæ, omnino terminentur; & ſi non ſpectant ad Coronam, in ipſorum Curiis terminentur in quorum tenementis oriuntur. Ceſt Charter prove ambideux points, ſcilicet, le Royall Juriſdiction, & le Royall Seignioꝛie: car appiert per ceo que le Seignioꝛ de Meth avoet power de determine touts Pleas del Coꝛone, que eſt principall point de Juriſdiction royall; & que il ad auxy Tenures in capite & magnates deins ſon Territoꝛie, queux magnates ſont tiels Barons come le Countie de Cheſter ad create deins ſon County Palatine come eſt avantdit. Et pur ceo pluſoꝛs Gentlehomes cybien en Meth que en auters Territoꝛies, queux avoent tiels Royall Liberties, avoent le title de Barons: come le Baron de Skreene, le Baron de Navan, le Baron de Galtrim, en Meth; le Baron de le Narow, & le Baron de Rhebane, en Kildare; le Baron de Idrone, en Catherlaugh; le Baron de Burnchurch, en Kilkenny; le Baron de Nevill, en Wexford; le Baron de Loughmo, in Tipperary; le Baron Miſſet, & le Baron Savage, in Ulſter.

Et pur ceo, tout temps depuis que ceſt Seignioꝛie de Meth debeignoit al Coꝛone per diſcent al Edw. 4. ceo ad eſtre tenus come un certain Ley en l'Eſchequer icy, viz. que ſi trove ſoit per office que aſcun tꝛ deins le County de Meth ſoit tenus del Roy come de ſon Mannoꝛ de Trim per Regale ſervitium, que ceo eſt un tenure in capite: & touts ſoits Liberies ont eſtre ſue de tiels terres, come appiert per innumerable Recoꝛds de ceſt Court; ꝓ ceo que ceſt Regale ſervitium fuit tenure in capite del Seignioꝛ de Meth quant le County Palatine fuit in eſſe la.

Et ouſter ceo, a pꝛober le royall Juriſdiction del Seigniour ð Meth, un Recoꝛd fuit monſtre del tout le pꝛocæding en Aſſiſe de novel diſſeiſin poꝛt per John Counte de Salop verſus Willielmum Nugent & ſa feme, pur certaine terres en Moyrath: per quel Recoꝛd appiert, que Anno 25 Henric. 6. Rich. Duke de Yorke, adonques Seignioꝛ de ceſt Liberty, grauntoit le Commiſſion de pꝛender ceſt Aſſiſe, deſouth le teſte de ſon Seneſchall, en ceſt foꝛme; Richardus Dux Eborum, Comes Marchiæ & Ultoniæ, dominus de Wigmore, Clare, Trim & Conaught, dilectis & fidelibus ſuis, Willielmo Bois, Juſticiario ſuo ad placita coram Seneſchallo ſuo Libertatis ſuæ Midiæ, Richardo Bath milit', Edwardo Somerton Armigero, Williel' Sutton Armigero, & Roberto de la Field Armigero, ſalutem. Sciatis, quod conſtituimus vos Juſticiarios noſtros, una cum iis quos vobis aſſociaverimus, ad Aſſiſam novæ diſſeiſinæ capiendum, quam Johannes Talbot Comes Salopiæ arraniavit coram vobis, per breve noſtrum, verſus Willielmum Nugent Armigerum & Joannam uxorem ejus, de tenementis in Moyrath, &c. Ideo vobis mandamus, quod ad certos diem & locum, quos ad hoc provideritis, Aſſiſam illam capiatis, factum inde quod ad Juſtitiam pertinet, ſecundum legem & conſuetudinem Libertatis noſtræ prædictæ: ſalvis nobis Amerciamentis inde provenientibus. Mandamus etiam Vicecomiti noſtro Libertatis noſtræ prædictæ, &c.

Per quel Recoꝛd, & infinite auters de meſme le nature, trove en chefcun Court ð Recoꝛd al Dublin, eſt manifeſt, que le Seignioꝛ de Meth fuit un Countie Palatine, & ad jus Regale en point de Juriſdiction.

2. Ouſter ceo, tout le Territoꝛie de Ulſter fuit un County Palatine, & avoit touts les Pꝛerogatives avantdit, tanque

que ceo diſcendoit al Roy Edw. 4. Et a prober ceo un Record hors del Breminghams Tower fuit produce, que remaine ent les Common-Plea-Rolles la, 3 Edw. 2. membr. 26. ou ceſt entrie eſt fait: Hugo de Lacy, quondam Comes Ultoniæ, tenuit totam Ultoniam exemptam & ſeparatam à quolibet Comitatu, &c. & placitavit in Curia ſua omnia placita quæ ad Juſticiarios & Vicecomitem pertinent, & habuit propriam Cancellariam, abſque hoc quod reciperet Returna alicujus Vicecomitis.

3. Darrainement, le royall Libertie de Kildare aboit continuance tanque le Attainder del Gerald Countée de Kildare per Act de Parliament 28 Henr. 8. cap. 1. Mes apres, quant ſon fits fuit reſtore a ſon antient Inheritance per Letters Patents dated 1. Maii, 1 & 2 Phil. & Mar. coment que touts Liberties, Privileges, Honours, Juriſdictions, Conuſans de Pleas, &c. fueront regraunt a luy; uncore ceſt ſpeciall exception fuit fait, Magna Curia de recordo & Libertate Comitatus de Kildare tantummodo exceptis. Ceux Records, & auters a meſme le intent, fueront monſtres avant a prober le royall Juriſdiction & les royal Seigniories des Countées Palatines en Ireland; quix Records ſont les ſole authorities queux advomus icy, come la Ley ad eſtre priſe avant ceux heures en ceſt Realme: Car devant ceſt temps nul Reports ont eſtre fait & preſerve des Cales argues & adjudge icy, come ad eſtre uſe en Engleterre.

Et iſſint ſur conſideration del natur̃ d̃ County Palatine, & des Prerogatives incident a ceo, fuit reſolve, q̃ tiel Countée avoit un royal Seignior tibien en Ireland que en Engleterre, & q̃ tiel Royal Seignior poet bien aver un tenure in capite de ſon perſon.

2. SEcondment, ſur conſideration del nature & qualitie del Tenure in capite del Roy, fuit argue & reſolve, que ceſt tenure en queſtion, que fuit del perſon del Countée Palatine de Wexford, eſteant veſt en la Corone per Act de Parliament, ſerra ore un tenure in capite del Roy.

Car coment que fuit agrée, que tenure in capite eſt proprement del perſon del Roy, ou del Corone del Roy immediatement, pur ceo que le ſervice incident a ceſt tenure

ſuit primerment ordaine pur le defence del perſon del Roy & ſa Coronе, & iſſint eſt properment un tenure en groſſe, & nemy del Honor ou del Mannour, N. Br. fol. 5. k. & coment que ceſt tenure ne poet eſtre create per un ſubject, eſteant mærement en condition dun ſubject, car le Prince, le fits eigne del Roy, ne poet creater tenure in capite, 30 Hen. 8. Dier 44. b. uncore, ſicome le Roy, per annexing del Honor ou Mannor al Coronе, doñ a ceo tiel Prerogative, que les Tenants de ceſt Honor ou Mannor teignont de luy in capite, come le Honor de Raliegh, que fuit annex al Coronе, 11 Henr. 7. 33 Henr. 8. Br' Tenures 94. & iſſint fuit le Honor dñ Berkhamſtead en auntient temps, devant ceo que fuit annex al Duchy dñ Cornwall, 21 Edw. 3. 41. & en ceſt Realm le Mannor de Trim eſt auxy annex al Coronе, come appiert per le Eſtatute 10 Henr. 7. cap. 15. en meſme le manner le Roy, per exempting & ſeparating un Countie, ou auter graund Territorie, del Coronе, poet faire le Seigniorie de ceo ty Royall & abſolute, & iſſint qualifie le perſon del Seignior per communicating a luy les royall Prerogatives, que les tenures de ſon perſon ſerront tenures in capite. Et tiel Seigniorie eſt chelcun County Palatine, que eſteant hors del ordinary Juriſdiction de Coronе, fait le Seigniour en ceſt reſpect plus hault que un ordinary ſubject, & per conſequence hors del Maxime ou Rule de noſtre Ley, que un ſubject neſt capable de un tenure in capite: car accordant al Rule del Civile Ley q̃ eſt miſe per Caſſanæus in Catalogo gloriæ Mundi, Qui habent Regale feodum ſunt Reguli quidam. Et ove ceo, come eſt devant exprelle, Bracton agrée, lib. 3. titul. de Corona ca. 8, Comites Palatii Regalem habent poteſtatem in omnibus, ſalvo dominio Domino Regi ſicut Principi.

Fuit auxy reſolve, que ne beſoigne de neceſſity que chelcun Capite tenure ſoit ab antiquo, nient obſtant les parols de Prærogativa Regis cap. 1. que declare que le Roy avera primer ſeiſin de ipſis qui tenent ab antiquo de Corona. Car ſi le Roy a ceſt jour graunt terres, tenendum de luy, ſans exprelſer alcun ſervice certaine, ceo eſt tenure in capite de ſon perſon, 29 Henr. 8. Br' Livery 57. Iſſint poet le Roy per exprelſe parols reſerver tenure per ſervice dñ Chivaler de ſon perſon, que eſt auxy tenure in capite.

Auxy

Auxy neſt un generall Rule ſans exception, que nul tenure create oꝛiginalment per un ſubject poet devenir un tenure in capite. Car coment que la Ley ſoit iſſint come eſt tenus 30 Henr. 8. Dier 44. b. que ſi meſnaltie ſoit tenus del Roy in capite, & le Tenant tient del meſne per ſervice del Chivaler, ſi ceo meſnalty eſcheat per moꝛt del meſne ſans heire, le Tenant ne tiendꝛa in capite del Roy, mes per ſervice del Chivaler come devant: iſſint ſi le Roy purchaſe tiel meſnalty, ou ad tiel meſnalty per diſcent: Uncoꝛe ou le meſnalty eſt tenus del Roy in capite, & le tenaunty vient en lieu del meſnalty per le act del tenant, il tiendꝛa, come le meſne teignoit, in capite. 19 Eliz. Dier 349. Seignioꝛ, meſne, & tenant; le Roy eſt Seignioꝛ, le meſne tient del Roy in capite, & le Tenant tient de luy in Socage: ſi le Tenant obtaine releas del meſne, ou foꝛjudge le meſne, il noꝛe tiendꝛa in capite; car volenti non fit injuria. Et ſeꝛroit injurious al Roy, ſil perdꝛoit ſon tenure in capite per le act del Tenant, & aveꝛoit en lieu ð ceo tantſolement un tenure in Socage.

Darraignmēt, un manifeſt difference fuit miſe enter le Caſe de Principality de Gales, 17 Eliz. 345. a. & ceſt Caſe de County Palatine. Car ou devant le ſubjectꝫ de Gales al Coꝛone Dengleterre, home teignoit terre del Pꝛince de Gales ꝑ ſervice de aler en ſon guerre, ceo ne fuit tenure dont la Common Ley poet pꝛender notice; car ceſt Pꝛincipality de Gales ne fuit goberne ꝑ la Common Ley, mes fuit Dominion aperluy, & aveꝛoit ſes pꝛoper Leyes & Cuſtomes: & pur ceſt reaſon quant cē pais fuit reduce delouth le ſubjection del Coꝛone Dengleꝛre, tiel tenure q̄ fuit del perſon de Pꝛince de Gales ne poet devenir un capite tenure del Roy Dengleterre. Mes cheſcun County Palatine, cibien en Ireland q̄ en Engleterꝛ, fuit oꝛiginalm̄t parcel del meſme le Realme, & deꝛive del Coꝛone, & fuit touts foits goberne ꝑ la Ley Dengleterre, & les terres la fueront tenus per ſervices & tenures dont la Common Ley pꝛiſt notice, coment que le Seigniour aveꝛoit ſeveꝛall Juriſdiction & Seignioꝛy ſeparate de la Coꝛone: & pur ceo le tenure in capite del County Palatine eſt de meſme le nature que le tenure in capite del Roy, & iſſint eſteant devenus al Coꝛone ſerra tenure in chiefe del Roy,

Le Caſe del Countie Palatine.

Roy, come ceo fuit devant del County Palatine. Et le reaſon & ceſt differente appiert pleinment 19 H. 6. fol. 12. Ceſt Caſe fuit argue per le Atturney general pur le Roy, & per Jo. Meade & Edw. Fitz-Harris pur Prendergraſt.

Paſchæ 9 Jacobi,

En le Common Bank.

Le Caſe de Commenda.

EN Quare impedit port per le Roy vers Cyprian Horſefall & Robert Wale, ſur ſpeciall plea pleade per Wale le encumbent, le Atturney del Roy demurre en ley: & ſur ceo le Caſe en ſubſtance ſuit tiel.

Le Corporation de Kilkenny, eſtoant Patrons de un Vicarage deins le Diocele de Oſſory, ont preſent a ceo un Patrick Fynne, q̃ ſur lour Preſentation fuit admit, inſtitute, & induct. Apres ceo, durant l'encumbency del dit Fynne, Adam Loftus Archevelque de Dublin, & Ambroſe Forth Doctor del Civill Ley, eſtoant Cõmiſſioners Delegates p̃ granting de Faculties & Diſpenſations en ceſt Realme accordant al Statute de 28 H. 8. cap. 20, per lour Letters de grace dat. 9. Octob. 33 Eliz. grantant al Jo. Horſefall, adonques Evelque de Oſſory, que le dit Evelque unum vel plura Beneficia, curata vel non curata, ſui vel alieni juriſpatronatus, non excedentia annuum valorem quadraginta librarum, adtunc vacantia, vel quæ imposterum vacare contigerint, perpetuæ Commendæ titulo adipiſci, occupare, retinere, omneſque fructus ad familiæ ſuæ ſuſtentationem convertere, poſſit, juribus ſive inſtitutis quibuſcunq; in contrarium non obſtantibus: quel Faculty ou Diſpenſation fuit apres confirm & ra-

& ratifie per Letters patents deſouth le graund Seale de Ireland, accordant al dit Statute de 28 H. 8. c. 20. Apres ceo, viz. 20. Maii, anno 38 Eliz. Patrick Fynne le incumbent mourſt, per que le dit Vicarage eſteant void, & iſſint continuant void per tempus ſemeſtre, per que le Ebeſque ad title de collater a ceo per laps, le dit Ebeſque, per vertue del dit Faculte ou Diſpenſation, adeptus eſt, occupavit & retinuit le dit Vicarage perpetuæ Commendæ titulo, & prift les fruits de ceo a ſon uſe, juſques al 13. jour de Febr. Anno Dom. 1609. a quel jour le dit Ebeſque mourſt. Apres que mort, le dit Cyprian Horſefall, aiant purchaſe le prochein Avoidance de ceſt Vicarage, preſent le dit Wale, que fuit admit, inſtitute & induct: & apres le Roy preſent un Winch, que eſteant diſturbe per les dits Horſefall & Wale, le Roy port Quare impedit.

Et ſi le dit Ebeſque, quant il ad obtaine & occupy ceſt Vicarage per vertue de ceſt Faculty ou Diſpenſation, fuit fait p̄ t̄ perfect incumbent de ceo, iſſint que le Eſgliſe eſteant pleine de luy, nul title per laps puiſſoit devolver al Roy durant le vie del Ebeſque, fuit le principal Point move & debate en ceſt Caſe.

Et en le argument de ceſt Point (que fuit argue al Barre primerment per le Counſell al Common Ley, & apres per 2 Advocates bien apriſe en le Canon Ley, & al Bench per touts les Juſtices) 2 choſes fueront principalment conſider per ceux queux arguont pur le Clerke del Roy.

1. Si le Ebeſque puiſſoit, per aſcun Ley, aver & tener ceſt Benefice ſans tiel Diſpenſation ou Faculty.

2. Quel effect ou operation ceſt Faculty ou Diſpenſation avera per la Ley.

1. QUant al primer, ils teignont pur clære Ley, que un Ebeſque, per le antient Eccleſiaſticall Ley Dengleterre, ne puiſſoit tener un auter Benefice ove cure deins ſon Dioceſe: & ſil avoit tiel Benefice devant ſon promotion al Ebeſquery, que ceo debient void quant il eſt create un Ebeſque. Et ceo eſt le antient Ley Dengleterre, come eſt ſoventfoits dit en le Caſe del Ebeſque de S. Davids 11 Henr. 4. & 41 Edw. 3. 5. b. accord a ceo. Et le reaſon eſt, pur ceo que le Ebeſque ne poet viſiter luy meſme, & ceſty

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que ad l' office de Soveraigne ne retiendra l' office de Subject; come Hankeford dit in le dit Caſe de 11 Henr. 4. Et ſur ceſt reaſon eſt dit en 5 E. 3. 9. que ſi Parſon ſoit fait Dean, le Parſonage devient void, pur ceo que Dignity & Benefice ne ſont compatible. Auxi nul Eccleſiaſticall perſon, per les antient Canons & Countills, puiſſoit aver 2 Benefices ove cure ſimul & ſemel, mes le primer fuit void per le preſell del ſecond. Et ceo fuit le auntient Ley del Eſgliſe uſe en Engleterre long temps devant le Eſtatute de 21 Henr. 8. que fuit fait en affirmance de ceſt auntient Ley, come appiert en Hollands Caſe en le 4. part des Reports de le Seignior Coke: & ove ceo accordant les livres de 24 Edw. 3. 33. 39 Ed. 3. 44. a. & N. Br. 34. l. Et le text del Canon Ley, q̃ eſt le proper fountaine de ceſt learning, libr. Decretal. titul. de Præbendis & Dignitatibus, cap. De multa, prove ceo pleinement, ou eſt dit, De multa providentia fuit in Lateranenſi Concilio prohibitum, ut nullus diverſas dignitates Eccleſiaſticas, vel plures Eccleſias parochiales, reciperet, contra Sanctorum Canonum inſtituta. Quia vero, propter præſumptiones & quorundam cupiditates, nullus hactenus aut rarus de prædicto Statuto fructus provenit: nos evidentius & expreſſius occurrere cupientes, præſenti decreto ſtatuimus, ut quicunq; receperit aliquod beneficium curam habens animarum annexam, ſi prius tale beneficium habebat, eo ſit ipſo jure privatus, & ſi forte illud retinere contenderit, etiam alio ſpolietur, &c. Circa ſublimes tamen & literatas perſonas, quæ majoribus beneficiis ſunt honorandæ, (cum ratio poſtulaverit) per ſedem Apoſtolicam poterit diſpenſari. Et ove ceo accord le Text in libr. Decretor. cauſa 21. quæſt. 1. In duabus Eccleſiis Clericus conſcribi nullo modo poteſt. Et iſſint eſt apparant, que l'Evelque per nul Ley poet aver ou retainer ceſt Benefice deins ſon Dioceſe ſans Diſpenſation, que eſt relaxatio juris, & permit ceo deſtre fait que la Ley ad prohibit devant, 12 Henric. 8. 6. a.

2. SEcondment ils arguont, que le Faculty ou Diſpenſation avantdit grant al Evelque de Oſſory fuit void a touts entents: & ſi ceo prendroit effect, uncore ceo ne fait le Evelque perfect encumbent de ceſt Vicarage, quant il prift & occupie ceo eſteant void p vertue de ceſt Faculty, mes que

tes continue void, issint que le Roy ad title a presenter pur laps. Et pur cleering de cest point, 1. le originall & l'inconvenience de Dispensations & Non obstantes suit conſider: 2. suit enquire quant & en ql manner le Canon Ley de Rome suit introduce & admit en les Dominions del Roy Dengleterre; & le ql, le Roy ou le Pape, puissoit de jure dispenser obe le Ecclesiasticall Ley en cest & auters cases, devant le selans de cest Statute de Faculties.

Et suit dit, que le Non obstante suit invent & primerment use en le Court del Rome; p̄ que Marsil. Pat. pronounce un Væ envers le dit Court, pur introducing cest clause de Non obstante, q̄ ad estre un malheys precedent, & mischievous al touts Common weals de Christendome. Car les Tempoal Princes perceivant q̄ le Pape dispensoit obe ses Canons, en imitation de luy ont use lour Prerogative de dispenser obe lour Penall Leyes & Statutes, ou devant ils ont cause lour Leyes destre religiously observe, come les Leys de Medes & Persians, queux ne puissont estre dispensed with; come est dit en le livre de Hester. Vide le Case de Penal Statutes, 7 Coke fol. 36. b. Et pur ceo un Canonist dit, Dispensatio est vulnus quod vulnerat jus commune. Et un auter dit, que touts abuses serront reform̄e, si duo tantum verba, viz. Non obstante, non impedirent. Et Mat. Paris in Anno Domini 1246. aiant retite certain decrees fait en le Council de Lions q̄x fuerunt beneficiall p̄ l'Esglise Dengleterre, sed omnia hæc & alia, dit il, per hoc repagulum, Non obstante, infirmantur.

Et pur monstrer quant & coment le Canon Ley suit introduce en Engleterre, & quel person de jure puissoit dispenser obe l' Ecclesiasticall Ley en cest case, devaunt le selans del Statute de Faculties; suit note & observe, que apres que l'Ebesque de Rome ad assume sur luy destre Spirituall Prince ou Monarch de tout le Mound, il ad attempt auxy de doner Leys al touts Nations, come un real mark de son Monarchie. Mes ils, sachant bien, quod ubi non est condendi authoritas, ibi non est parendi necessitas, ne impose ces Leys al primes peremptorily sur touts gents sans distinction, mes offer eux timide & precario. Et pur ceo primerment il causast certain Rules destre collect pur le government del Clergy tantum, queux il appell Decreta, & nemy

nemp Leges vel Statuta. Ceux Decrees fueront publiſh en l'an 1150. que fuit durant le Reigne del Roy Stephen: & pur ceo, ou le Seignior Coke ad note en le Preface al 8. part de ſes Reports, Quod Rogerus Bacon, frater ille perquam eruditus, in libro De impedimentis ſapientiæ, dicit, Rex quidem Stephanus, allatis legibus Italiæ in Angliam, publico edicto prohibuit ne ab aliquo detinerentur, fuit probablem conjecture, que ceo eſt deſire intend d ceux Decrees queux fueront adonqs nobelm compile & publiſh. Uncore ceux Decrees eſteant receive & obſerve per le Clergy des Weſterne Eſgliſes tantum, (car le Eaſt Church ne unques receivoit aſcuns de ſes Rules ou Canons, Kellawayes Reports, 7 Henr. 8. fol. 184.) l'Eveſque de Rome attempt auxy de trahir le Laietie al obedience de ſes Ordinances per degrees: & a ceſt intent, primerment il propound certaine Rules ou Ordinances pur Abſtinence, ou jours de Faſting, deſt obſerve per le Laiety tibien que per le Clergy, queux fueront ſur le primer Inſtitution appel per un gentle paroll, Rogationes, come Marſilius Pat. libr. Defenſor. pacis, part. 2. cap. 23. ad obſerver & inde, come ſemble, le Semaigne de Abſtinence pchein devant le feaſt de Pentecoſt fuit appell le Rogation-week, ceſt temps de Abſtinence eſteant appoint al commencement per tiel Ordinance que fuit appell Rogatio, & nemp Præceptum vel Statutum. Quant les lay homes de lour devotion aveent receive & obey ceux Ordinances d Abſtinence, donques l'Eveſque de Rome paſſoit ouſter, (De una præſumptione ad aliam tranſivit Romanus Pontifex, cõe Marſil. Pat. la dit) & feſoit pluſors Reſcripts & Orders per nomen Decretalium, queux fueront publiſh en l'an 1230. q̃ fuit Anno 14 H. 3. aut eo circiter. Vid. Matth. Paris Hiſtor. magn. 403. Et ceux fueront fait de lier tout le laietie, tibien Soveraigne Princes come lour ſubjects, en tiels choſes queux concernont lour civill & tẽporall eſtates. Come que nul lay home averoit le Donation del Eccleſiaſtical Benefice; Que nul lay home marrioit deins certein degrees, ouſter les degrees limit per la Leviticall Ley: Que touts enfants nées devant eſpouſels ſerront adjudge apres les eſpouſels legitimate, & capable de tempporall enheritance: Que touts Clerkes ſerront exempt de ſecular power: & auters de meſme le nature.

Mes ceux Decretalls eſteaunt publiſh, ne fueront entirement & abſolutement receive & obey en aſcun part de Chriſtendome, mes ſolement en le tempozall Territozie del Pape, que eſt appel per les Canoniſts Patria obedientiæ. Mes del auter part, pluſozs de ceux Canons fueront tout ouſterment reject & diſobey en France & Engleterre, & auters Chriſtian Realmes, que ſont appell Patriæ conſuetudinariæ. Come le Canon que prohibuit le Donation des Benefices per manum laicam fuit touts foits diſobey en France, en Engleterre, le Realme de Naples, & divers auters Countries & Commonweales. Et le Canon de faire les enfants legitimate queux ſont nées devant eſpouſels, fuit ſpecialment reject en Engleterre, quant en le Parliament tenus al Merton, omnes Comites & Barones una voce reſponderunt, Nolumus Leges Angliæ mutari, quæ hucuſque uſitatæ ſunt, &c. Et le Canon que exempt Clerks de ſecular power ne fuit unques pleinment obſerve en aſcun part de Chriſtendome, Kellaway 7 Hen. 8. 181. b. Que eſt un infallibl' argument, que ceux Ordinances naboent lour force per aſcun authoritie que le Court de Rome ad de impoſer Leys ſur touts Nations ſans lour conſent, mes per le approbation & uſage del people que ceux ad receive & uſe. Car per meſme le reaſon que ils puiſſont rejecter un Canon, ils puiſſont rejecter touts les auters. Vide Bodin. lib. 1. de Rep. cap. 8. ou il dit, que les Roys de France, ſur erection de touts Univerſities la, ont declare en lour Charters, Que ils voilent receiver le Profeſſion del Civill & Canon Leyes pur uſer a lour diſcretion, & nemy deſire oblige per ceux Leyes.

Mes quant a ceux Canons queux fueront receive, accept & uſe en aſcun Chriſtian Realme ou Commonweale, ceux, per tiel acceptation & uſage, ont obtaine le force de Leyes en tiel particular Realme ou State, & ſont deveigne part des Eccleſiaſticall Leyes de tiel Nation. Et iſſint ceux que fueront embrace, allow & uſe en Engleterre fueront fait, per tiel allowance & uſage, part de les Eccleſiaſticall Leys Dengleterre. Per que l'interpretation, diſpenſation ou execution de ceux Canons, eſteant devenus Leyes Dengleterre, apperteignoit ſolement al Roy Dengleterre & les Magiſtrates deins ſes Dominions, & il

& ſes

& les Magiſtrates avoent ſole juriſdiction en tiels caſes, & le Evesque de Rome nad rien a faire en le interpretation, diſpenſation ou execution de ceux Leyes en Engleterre, coment que fueront primerment devise en le Court de Rome. Nient plus que le cheife Magiſtrate del Athens ou Lacedemon puiſſoit claimer juriſdiction en le antient city de Rome, pur ceo que les Leyes de les 12 Tables fueront apprompt & impoyt de ceux cities de Greece. Et nient plus que le Maſter del New Colledge en Oxford avera command ou juriſdiction en le Kings Colledge de Cambridge, pur ceo q̃ les private Statutes p̃ que le Kings Colledge eſt goberne fueront, pur le plus part, boyrow & priſe boys del Libre de Foundation del New Colledge en Oxford. Et certes per ceſt reaſon le Emperor puiſſoit claimer juriſdiction en maritime cauſes deins les Dominions del Roy Dengleterre, p̃ ceo que nous avomus de long temps receive & admit le Imperial Ley pur le determination de tiels cauſes. Vide Cawdries Caſe en le 5. part des Reports de le Seignior Coke; & Kellawayes Reports, 184. a.

Uncore le Evesque de Rome perceivant que pluſors de les Canons fueront receive & uſe per divers nations de Chriſtendome, per colour de ceo il claimoit de aver Eccleſiaſticall Juriſdiction en chescun Realme & State ou les Canons fueront receive, & miſoit ſes Legates ove ſeverall Commiſſions en ſeveral Realmes de Chriſtendom̃, de oyer & determiner cauſes ſolonque ceux Canons: queux Canons coment que le Pape ne ſes Miniſters ſur le primer venting & utterance n'oſeront appeller Leyes, Ne committerent crimen læſæ Majeſtatis in Principes, come Marſil. Pat. ad bien obſerve, libr. Defenſor. Pacis, part. 2. c. 23. que dit auxy la, que ceux Canons, entant que ſont fait per le Pape, neque ſunt humanæ leges, neque divinæ, ſed documenta quædam & narrationes; uncore quaunt il perceivoit que ceux Canons fueront receive, allow & uſe en part per ſeverall Nations, il compile eux en Volumes, & appell eux Jus Canonicum, & ordaine que ſerront lies & expound en publike Schooles & Univerſities, com̃ l' Imperiall Ley fuit lie & expound, & commaund que ſerront obey per touts Chriſtians ſur paine de Excommunication, & contend ſovent

foits

ſoits de metter eux en execution per coactive power, & aſſume ſur luy de interpreter, & abrogater, & diſpenſer obe ceux Leyes en touts les Realmes de Chriſtendome a ſon pleaſure: illint que les Canoniſts aſcribont a luy ceſt prerogative, Papa in omnibus pure poſitivis, & in quibuſdam ad jus divinum pertinentibus, diſpenſare poteſt, quia dicitur omnia jura habere in ſcrinio pectoris ſui, quantum ad interpretationem & diſpenſationem, Libr' 6. de Conſt. cap. Licet.

Pur le temps, Anno 25 E. 1. Simon un Moigne de Walden cõmenceoit de lier le Canon Ley en le Univerſitie de Cambridge. Vide Stow & Walſingham en meſme le an. Et le Manuſc. libr' 6. Decretal. en le Library Novi Coll. Oxon. ad ceſt inſcription in fronte, Anno Domini 1298. q̃ fuit le an 26 E. 1. 19. Novembr. in Eccleſia fratrum Prædicator. Oxon' fuit facta publicatio lib. 6. Decretal. Per q̃ appiert quaunt le Canon Ley fuit introduce en Engleterre. Mes le juriſdiction que le Pape per colour de ceo claimoit en Engleterre fuit un mere uſurpation, a quel les Ropes Dengletre de tẽps en temps feſoent oppoſition, juſques al temps del H. 8.

Et certes le Judgement del Parliament expreſſe en le Preamble de ceſt Statute de Faculties eſt notable a ceſt purpoſe. Ou eſt recite que le Evelque de Rome ad deceive & abuſe les ſubjects del Corone Dengleterre, Pretending and perſuading to them that he had full power to diſpenſe with all humane Laws, Uſes and Cuſtomes of all Realms, in all Cauſes which be called Spirituall: which matter hath been uſurped and practiſed by him and his Predeceſſours for many years, to the great derogation of the Imperiall Crown of England. For whereas the ſaid Realm of England, recogniſing no Superiour under God but the King, hath been, and yet is, free from ſubjection to any man's Laws, but onely to ſuch as have been deviſed, made and ordained within this Realm for the weale of the ſame, or to ſuch other as by ſufferance of the King and his Progenitors the people of this Realm have taken at their free liberty, and by their own conſent, to be uſed among them, and have bound themſelves by long uſe and cuſtome to the obſervance of the ſame, not as to the obſervance of the Laws of any forrein Prince, Potentate or Prelate, but as to the accuſtomed and ancient Laws of this Realm,

originally

originally eſtabliſhed as Laws of the ſame by the ſaid ſufferance, conſent and cuſtome, and not otherwiſe: it ſtandeth with naturall equity and good reaſon, that all ſuch humane Laws made within this Realm, or induced into this Realm by the ſaid ſufferance, conſent and cuſtome, ſhould be diſpenſed with, abrogated, amplified or diminiſhed by the King and his Parliament, or by ſuch perſons as the King and Parliament ſhould authoriſe, &c. Vide 21 H. 7. 4. a. ou eſt dit, que certain Prieſts fueront deprive de lour Benefices per Act de Parliament en temps R. 2.

Per que fuit conclude, que le Roy Dengleterre, & nemy le Pape, devant le feſans de ceſt Statute de Faculties, puiſſoit de jure diſpenſer ove le Eccleſiaſticall Ley en ceſt & auters caſes. Car coment que pluſors de noſtre Eccleſiaſticall Leyes ont eſtre primerment devile en le Court de Rome; uncore ceux, eſteant eſtabliſh & confirme en ceſt Realme per acceptance & uſage, ſont ore devenus Engliſh Leyes, & ne ſerront amplius repute Romiſh Canons ou Conſtitutions. Come Rebuffus, parlant de regula Cancellariæ Romanæ de veriſimili notitia, Hæc regula, dit il, ubique in regno Franciæ eſt recepta, & eſt lex Regni effecta, & obſervatur tanquam lex Regni, non tanquam Papæ regula; & Papa eam revocare non poteſt.

Et pur ceo, l' Eccleſiaſticall Ley que ordaine, que quaunt home eſt create en Evelque, que touts ſes inferior Benefices ſerront voide, eſt ſoventfoits dit en le Caſe del Evelque de Saint Davids 11 Henr. 4. deſtre le antient Ley Dengleterre. Et 29 Edward. 3. 44. a. en le Caſe del Prebend de Oxgate, eſt dit, que le Conſtitution que ouſte Pluralities commenceoit en le Court de Rome, uncore un Eſglile fuit adjudge voide en Banke le Roy pur cel cauſe. Per que appiert, que depuis que ceſt Conſtitution fuit receive & allow en Engleterre, ceo fuit devenus Ley Dengleterre. Vide Statutum de Bigamis cap. 5. ou le Roy & ſon Councill en Parliament declarent come un Canon fait en le Conſtill de Lions ſerroit interpret & expound. De Bigamis quos Dominus Papa in Concilio ſuo Lugdunenſi omni privilegio ſuo Clericali privavit, per Conſtitutionem inde editam, & unde quidam Prælati illos qui effecti fuerunt Bigami ante prædictam Conſtitutionem, quando de felonia rectati fuerunt, tanquam

quam Clericos elegerunt sibi deliberandos, concordatum est & declaratum coram Rege & Concilio, quod Constitutio ista intelligenda sit, quod sive effecti fuerint Bigami ante prædictam Constitutionem sive post, de cætero non liberentur Prælatis, sed fiat de iis justitia sicut de laicis.

Uncore touts les Ecclesiasticall Leyes Dengleterre ne furront derive & apprõpt del Court de Rome. Car long temps devant que le Canon Ley fuit authorise & publish, (q̃ fuit depuis le Norman Conquest, come devant est monstre) les ancient Roys Dengleterre, viz. Edgar, Athelstan, Alfred, Edw. le Confessor, & auters, ount, ove le advise de lour Clergy deins le Realme, fait divers Ordinances pur le governm̃t del Esglise Dengletre: & depuis le Conquest, divers Provincial Synods ont estre tenus, & plusors Constitutions ont estre fait en ambideux Realmes Dengleterre & Ireland; touts queux sont part d̃ nostre Ecclesiasticall Leyes a cest jour. Vide le Chart. de William le Conqueror dat. anno Domini 1066. irrot. 2 R. 2. enter les Charters in Archiv. Turris London. pro Decano & Capitul' Lincoln'. Willielmus, Dei gratia, Rex Anglorum, &c. Sciatis, &c. quod Episcopal' leges quæ non bene, nec secundum Sanctorum Canonum præcepta, usque ad mea tempora in Regno Angliæ fuerunt, communi consilio Episcoporum meorum, & cæterorum Episcoporum, & omnium Principum regni mei, emendandas judicavi, &c. Vide auxy Girald. Cambrens. libr. 2. cap. 34. en temps Henr. 2. Un Synode del Clergy de Ireland fuit tenus al Castle, en que fuit ordaine, Quod omnia divina, juxta quod Anglicana observat Ecclesia, in omnibus partibus Hiberniæ amodo tractentur. Dignum enim & justissimum est, ut sicut Dominum & Regem ex Anglia divinitus sortita est Hibernia, sic etiam exinde vivendi formam accipiant meliorem.

Et pur ceo les Roys Dengleterre, de temps en temps, en chescun age devant le temps del Henr. 8. ount use de graunter Dispensations en causes Ecclesiasticall. Car ou la Ley del Esglise est, que chescun Spirituall person est visitable per le Ordinary, le Roy William le Conquerour per son Charter exempt le Abbey de Battell de Visitation & Jurisdiction del Ordinary en ceux expresse parols, Sitque dicta Ecclesia libera & quieta imperpetuum ab omni subjectione Epi-

Epiſcoporum, & quarumlibet perſonarum dominatione, ſicut Eccleſia Chriſti Cantuarienſis, &c. per que il diſpenſe ove la Ley del Eſglíſe en ceſt caſe. Vide libr. De vera differentia Regiæ poteſtatis & Eccleſiaſticæ, edit. 1534. ou tout le dit Chark eſt recite alarge. Et tiel Charter fuit graunt al Abbey de Abingdon per le Roy Kenulphus, 1 H. 7. 23. & 25. & Cawdreys Caſe Cok. 5. fol. 10. a. Iſſint chelcun Appꝛopꝛiation compꝛiſt en ceo un diſpenſation al Parſon imparſonee, de aver & retainer le Benefice en perpetuitie, come appiert en Grendons Caſe, Pl. Comment. 503. En ql Act le Roy p la Common Ley ſerra toutfoits actor, non ſolement come ſupꝛeam Patron, come eſt auxi note en Grendons Caſe, mes auxi come ſupꝛeam Ordinary. Car le Roy ſole ſans le Pape poet faire Appꝛopꝛiation, 7 Edw. 3. Fitz. Quare impedit 19. Iſſint en le dit Caſe del Evelque de S. Davids, 11 Hen. 4. fol. 213. b. Hankford miſt ceſt queſtion, Si le Roy uſt graunt, devant le creation del Evelque, que il purroit ten' un Benefice & l' Evelquerie enſemble, ſicome l' Apoſtle ad fait, ne ſerra my le graunt bon? Norton & Skrene, Bon aſſets. Iſſint en 11 Hen. 7. 12. a. en le Caſe de malum prohibitum, & malum in ſe, eſt la tenus, que le Roy poet diſpenſer ove un Pꝛieſt d tener 2 Benefices, & ove un Baſtard que il ſerra Pꝛieſt, nient obſtant les Eccleſiaſticall Leys queux ſont al contrarie. Et ſicome il poet diſpenſer ove ceux Leyes, iſſint il poet pardon touts offences encounter ceux Leys, & ſon pardon eſt bar al touts Suits pro ſalute animæ, ou reformatione morum, & touts ſuits ex officio en l' Eccleſiaſticall Court, Halls Caſe en le 5. part de les Repoꝛts del Seignioꝛ Coke fol. 51.

CEſt point donques eſteant iſſint pꝛove, viz. que le Roy Dengleterre ſolement puiſſoit de jure diſpenſer ove le Eccleſiaſticall Ley en ceſt caſe & auters deins ſes Dominions, devant le ſeſans del Statute de Faculties; le effect & validitie de ceſt Facultie ou Diſpenſation eſteant graunt, ut ſupra, fuit conſider. Ceſt Faculty fuit graunt per Commiſſioners authoꝛiſe per Letters patents del Roigne Elizabeth de grank Faculties & Diſpenſations en ce Realme actoꝛdant al Statuk de 28 Henr. 8. cap. 20. enacted en ceſt Realme. Per quel Act tiels Commiſſioners ont meſme

l'authority que le Archeveſq̃ de Canterburie ad en Engleterre per force del Statute de 25 H. 8. cap. 21. enacted en Englefft. Quel Statute de 25 Henr. 8. done authority al Archevelque de Canterbury de graunt touts Faculties & Diſpenſations, &c. p̃ cauſes nient contrary ou repugnant al Saint Scriptures & Ley de Dieu, q̃x ont uſe en temps paravant deſtre eu & obtaine en le Court de Rome; & touts auts Faculties & Diſpenſations q̃ ſerront p̃ le honour del Roy & profit del Realm, iſſint q̃ ſont p̃ cauſes que ne ſont repugnãt al Leyes de Dieu. Et que touts auts deſtre fait & executed accordant al tenor de tielx Faculties & Diſpenſations ſerront firme, & remaineront en force, nient obſtant aſſ̃ forein Ley, Decrẽ, Canon, ou Decretall, &c. Per q̃ appiert quel power & authority ceux Commiſſioners avoent de granter Faculties & Diſpenſations. Mes ne appiert q̃ ils avoent power de grant aſcun Facultie ou Diſpenſation en tiel forme come l'Facultie ſupra eſt plead deſſ̃ grant al Eveſq̃ de Oſſorie. Car ceſt Faculty neſt garrant per le dit Statut, p̃ 2 principal reaſons.

1. Pur ceo que nul tiel Facultie ou Diſpenſation fuit actuſtome deſſ̃ graunt en le Court de Rome. Car les Faculties graunt la fueront de auſ forme, & different de ceſt Faculty in diũs materiall points: iſſint que ceſt Faculty, ſi ceo ad eſſ̃ obtaine en le Court de Rome, ad eſtre void per le rule del Canon Ley.

2. Admit q̃ tiel Faculty ad uſe deſſ̃ grant en le Court de Rome, uncore le cauſe p̃ q̃ c̃ eſt graunt eſt repugnant a les Saint Scriptures & Ley de Dieu, & p conſequence neſt en aſcun ſort garrant p le dit Statute.

1. Pur le forme de ceſt Faculty, q̃ eſt tiel, viz. que le Eveſque de Oſſory unum vel plura Beneficia, curata vel non curata, ſui vel alieni juriſpatronatus, adtunc vacantia, vel quæ impoſterum vacare contigerint, & non excedentia, &c. perpetuæ Commendæ titulo adipiſci, occupare, retinere, omneſque fructus ad familiæ ſuæ ſuſtentationem convertere, poſſit; juribus ſive inſtitutis quibuſcunq; in contrarium non obſtantibus. Ceo eſt trop geſtiall, & pur ceo eſt irregular, & fault certain materiall clauſes queux fueront touts foits miſe en tiels Faculties eſteaunt graunt & obtaine en le Court de Rome.

Car

Car en tiels Faculties grant la, ſuit touts ſoits un particular Derogation ou Non obſtante del droit de patronage des lay patrons, & del droit del Roy per expreſſe noſme, ou le patronage appertient a luy, auterment le Faculty ad eſtre void. Car per la Canon Ley les lay patrons doent eſtre appell & doñ lour conſents in touts caſes de ceſt nature. Et ſi tiel particular Non obſtante ne ſuit adde in le Faculty, un auk clauſe ſuit miſe, viz. Dummodo patronorum expreſſus accedat conſenſus. Auxy per un auter clauſe authority ſuit touts ſoits done al Officiall, ou Archdeacon, ou auter Eccleſiaſticall Miniſter, de metter ceſty a que le Faculty eſt grant in poſſeſſion del Benefice cum acciderit. Ou in ceſt Faculty graunt al Eveſqz de Oſſory eſt nul particular Non obſtante ou Derogation del droit de patronage, ne del Roy, ne des auters lay patrons, ne alcun mention fait de conſent del Roy, ou del alcun auter patron. Auxy per ceſt Faculty ceſty que ad obtain ceo ne beſoigne deſtre miſe in poſſeſſion per alcun Eccleſiaſticall Miniſter, mes il poet, come ſemble, prender le poſſeſſion del alcun Benefice, que ſerra void, de ſoy meſme, immediatement, & quaſi per ſaltum, ſans preſentation, inſtitution, ou induction, & ſans alcun auk formall ou legall collation.

Et a prober que les clauſes avantdit fueront touts ſoits miſe en tiels Faculties grant ou pchale in le Court de Rome, Rebuffus de Praxi beneficiorum (un treſbon authority a ceſt purpoſe) fuit bouch; ou traitant alarge de Papæ proviſionibus, il dit, quod cum Juſpatronatus laicis à jure reſervatum ſit, ob id Papa non ſolet conferre beneficia ſub jurepatronatus laicorum exiſtentia, niſi cum ſpeciali derogatione juriſpatronatus laicorum, & non eſt ſuæ intentionis, ut valeat collatio non facta ſpeciali derogatione; ut dicit Jo. Andreas (que fuit un antient Canoniſt long tẽps devant le Statute de Faculties) ſe de hoc vidiſſe Bullam directam Prælatis Angliæ, (quod nota:) alias proviſio Papæ tanquam ſubreptitia non valet, quia citra intentionem Papæ. Et ouſter il dit, quod clauſulæ generales derogatoriæ non ſufficiunt ad derogationem juriſpatronatus laicorum, etiamſi adeſſet clauſula [motus proprii,] & generalis clauſula [non obſtante,] (come eſt en ceſt Faculty,) aut clauſula [ad quamcunque collationem, præſentationem vel proviſionem pertineat,] quia

illa verba intelligerentur de Clericis, non de laicis. Il auxy dit, quod ſpecialis mentio Regis fieri debet; quia ſi proviſio à Papa facta fuerit non obſtante jurepatronatus laicorum, ſi ſpectaret ad Regem, non valeret proviſio, & Rex ſe opponere poſſet. Uncore il dit, que ceſt ſpecial Non obſtante ne beſoigne, ſi cē conditionall clauſe ſoit miſe en le Prohiſion, dummodo patronorum accedat conſenſus.

Et eſt deſtre note, q̄ Commenda eſt quædam proviſio; & p̄ teo Gomes, in regula de Idiomate, dit, quod commendare eſt providere, & quod Commenda comprehenditur ſub quibuſcunque regulis de proviſione loquentibus.

Et que per la Canon Ley le conſent del patron eſt requiſite, ou Benefice eſt done in Commendam, vide lib. 6. Decretal. cap. Nemo, ou le Gloſſe dit, Ad Commendam vocabitur patronus, & ſi qui alii ex tali Commenda læduntur. Et in legitimis conſtitut. Othobon. titul. de Commendis, (q̄ux Conſtitutions ſont annex al Linwoods Prohincials) eſt dit, quod conſenſus patroni ad hujuſmodi Commendam requiritur. Et p̄ meſme le reaſon en cheſcun Faculty ou Licence grant per le Pape de faire permutation, union, ou appropriation des Eſgliſes, ceux parols fueront adde touts foits, vocatis quorum intereſt; que entend principalment le patron, come Rebuff. & les auts Canoniſts dient. Et que union & appropriation ne ſerront fait ſans aſſent del Patron eſt manifeſt per noſtre livres, viz. 11 H. 7. 8. 6 H. 7. 13. 46 Aſſ. p. 50 Ed. 3. 26. 40 Ed. 3. 28. Grendons Caſe Plow. Com. 498. a.

A prober auxy, que en cheſcun tiel Faculty graunt per le Pape de aver & reteiner Beneficium vacans ſeu vacaturum, un clauſe executory fuit touts foits miſe, per que le Official, ou Archdeacon, ou auter Eccleſiaſticall Miniſter, fuit authoriſe de metter ceſty que ad tiel Faculty graunt a luy en corporall poſſeſſion de tiel Benefice, Rebuffus fuit cite, ou il declare le forme de ceſt Faculty; & la il dit, quod intruſus dicitur, qui intrat Beneficium propria authoritate. Car il ne enter en loyal manner, & ideo non intrat per portam. Et accordāt a teo Hankford dit, 11 H. 4. 229. a. q̄ ſi home ad obtaine Bull de Prohiſion, ſil ne ad Executors de ſon Bull, queux luy purront metter eins per authority & per courſe del Ley, ne ſerra adjudge eins per prohiſion del Pape, mes intrudor.

Per

Per que appiert que ceſt Faculty graunt al Eveſqꝫ de Oſſory varie en divers material points del ſorme des Faculties graunt en l' Court de Rome devant l' ſeſauns del Statut de Faculties, & p̄ ceo neſt garrant per le dit Statute en ceſt reſpect.

2. Admit que tiel Faculty fuit uſe & accuſtome deſtre graunt & obtaine en le Court de Rome, uncore neſt garrant per le Statute, pur ceo que le cauſe de ceſt Faculty neſt agreable al Saint Scripture & Ley de Dieu. Car ou l'expreſſe text de Scripture eſt, 1 Timoth. cap. 3. quod oportet Epiſcopum eſſe Doctorem & Hoſpitalem; experientia docet (dit Innocent. 6. Extravagan. ca. Paſtoris) occaſione Commendarum cultum Divinum minui, curam animarum negligi, hoſpitalitatem conſuetam & debitam non ſervari, ruinis ædificia ſupponi, &c. Et ou eſt dit en meſme le Text, que Eveſque ſerra unius uxoris vir, per que eſt entend (come les Canoniſts expound ceo) que il avera ſorſque un Eveſquery, ou un Cure, ils dient que per Commendam Bigamia contrahitur in Eccleſia. Et pur ceo un bon & pious Eveſque diſoit, (quant un auter Benefice fuit offer a luy a tener in Commendam) Abſit ut cum ſponſa habeam concubinam.

Mes per noſtre Ley, un Faculty graunt & execute en tiel ſorme come l'Faculty graunt ut ſupra al Eveſqꝫ de Oſſory eſt, fairoit manifeſt tort & injury aux layes Patrons. Car eſt expreſſe licence done al Eveſqꝫ de fair uſurpation ſur layes patrons, & de toller l' benefit de lour Advoulons, eſteant lour droit & inheritanc̄. Et ceo eſteant tort eſt malum in ſe, & encounſt la Ley de Dieu; & p̄ ceo ne puiſſoit eſtr̄ diſpenſed with devant l'Statut, ne p̄ l'Roy, ne per l' Pape: & ore tiel Faculty ou Licenc̄ neſt confirme ne intend d̄ſtre confirme per l'Statut de Faculties.

Et pur ceo quant al Roy eſt dit, 11 Henr. 7. 12. a. que le Roy ne poet diſpenſer ove aſcun d̄ fair nuſance en le hault chimin; & ſil ceo fait, tiel Diſpenſation eſt void: & 8 Hen. 6. 19. Roy ne poet graunt, que ſi home fait treſpaſſe a moy, que jeo navera action vers luy; ou que home ſerra ſon Judge demeſne. Et pur ceo eſt ſoventfoits dit en noſtre livres, que Prerogative del Roy ne fairá Tort al ſubject,

13 Ed.

13 Edw. 3. 8. a. 35 H. 6. 29. b. 5 Coke 55. b. Knights Case. Auxi coment que le Roy poet dispenser ove un Statute que prohibit indifferent chose destre fait, uncore il ne poet change la Common Ley per son Patent, 37 Hen. 8. Br. Patents 100. 6 Henr. 7. 4. Et ne poet dispenser ove la Common Ley ove Non obstante, 4 Coke 35. Bozoms Case. Et quant al Pape, est soventfoits dit en le dit notable Case del Evesque de Saint Davids, 11 Henr. 4. que les Bulls del Pape ne poent chãger la Ley Dengleterre. Et ceo accord ove les Rules de Canon Ley. Non valet declaratio Papæ vel Regis in præjudicium tertii; Rebuffus in Praxi beneficiorum, titul. De non tollendo jus quæsitum. Et alibi il dit, Per clausulam, motu proprio, &c. Papa non tollit jus tertii. Talis præsumitur mens Papæ concedentis qualis est juris. Donatio Principis intelligitur sine præjudicio tertii.

Si donques tiel Faculty ou Dispensation en tiel forme ne puissoit estre graunt per le Roy, ne per le Pape, devaunt le Statute de Faculties; certes les fesors de cest Statute ne unques entendoent de faire ascun Faculty bon, que fuissoit unreasonable & encounter common droit devant le Statute. Come les Statutes queux confirmont les Customes de London ne confirmont ascun unreasonable Custome que ad estre use en London. Et issint, come Lit. dit 165. a. le Statute de Glocester serra entend, que provide, que si baron, esteant seisie de terre en droit sa feme, alien la terre ove garrantie en le vie del feme, ne serra barre al heire del feme, si nul fine soit levie en le Court del Roy: ceo est destre entend & expound, si nul loyall fine soit droiturelment levie en Court del Roy en que le baron & feme joynant. Car si fine ove garranty soit levie per le baron sole sans sa feme, ceo ne serra barre al hr̃ del feme.

Mes pur faire cest point uncore plus cleare, le nature & difference de les Commenda's warrantable per la Canon Ley fueront declare & consider. Et quaunt a ceo, fuit dit, quod Commenda Ecclesiæ est rien forsq; commendatio Ecclesiæ ad custodiam alterius. Et pur ceo Decret. causa 21. q. 1. titul. Qui plures, le Glosse dit, Commendare nihil aliud est quam deponere. Cest Commenda seu Commendatio Ecclesiæ est divers, solonque le nature del Esglise, & le limitation

tation ou continuance de le Commenda: Car Commenda poet estre Ecclesiæ curatæ, vel non curatæ; & poet estre temporanea, viz. pur temps certaine, come pur 6 mois, ou perpetua, viz. durant le vie del Commendatary. Esglise ove cure ne poet estre done in Commendam, si ne soit pur evident necessity, ou profit del Esglise, viz. de supplier le Cure tanque provision soit fait del sufficient Incumbent. Et pur ceo fuit provide per le Councill de Lions, que un Parochiall Esglise ne serroit done in Commendam, nisi ex evidenti necessitate, vel utilitate Ecclesiæ; & quod talis Commenda ultra semestris temporis spatium non duraret: & quod secus factum fuerit sit irritum ipso jure, &c. 6. Decretal. c. Nemo. Mes Benefice sans cure poet estre done per le Canon Ley pur sustentation del Commendatary, vel ad mensam. Et en cest sense les Canonists diont, quod Commenda est quasi comedenda, quia Ecclesia quæ traditur in Commendam quasi comeditur & devoratur. Et tiel Benefice propermt poet estre done in perpetuam Commendam; Summa summarum, titul. Commenda, articul. 1. & 2. Per q̃ appiert, q̃ le dit Vicarage, esteant Benefice ove cure ne poet estre done in perpetuam Commendam p l'Canon avantdit. Et comt q̃ l' Glosse sur le dit Canon, 6. Decretal. cap. Nemo, dit, quod ista constitutio non comprehendit Romanum Pontificem, ideo Romanus Pontifex potest in perpetuum commendare; uncore appiert auxy, per c̃ q̃ est monstr̃ devant, q̃ le Pape ne usoit, ne puissoit don̄ Commendam en tiel form come l'Faculty ou Dispensation avantdit ē done. Pur q̃ fuit conclude, q̃ cest Faculty ou Dispensation fuit void a touts intents.

MEs admit que cest Faculty prendroit effect, & serroit perpetua Commenda; uncore ceo ne fait l'Evesque perpetuum Vicarium, issint q̃ soit perfect Incumbent del dit Esglise, & que le Esglise soit pleine de luy durant son vie.

Car per le Rule de nostre Ley, un Esglise ne serra dit pleine vers common person, si l'Incumbent ne soit eins per Presentation, Institution, ou per formall Collation, q̃ amount al Presentation & Institution. Mes vers l'Roy serra nul plenarty sans Presentation, Institution & Induction, 22 Hen. 6. 27. 44

27. 44 Ed. 3. 3. 11 Henr. 4. 7. 24 Edw. 3. 30. Et pur ceſt reaſon un Parſon emparſonée ne pledza plenarty vers eſtraunge patron, p̄ ceo que il ne vient eins per Preſentment, 38 Henr. 6. 20. 39 Henr. 6. 21. 46 Aſſ. pl. 4. 14 Henr. 8. 30. Vide auxy le Statute Weſtm' 2. cap. 5. per que ceſty que plead plenitudinem Eccleſiæ doet monſtrer de quel Preſentment. Et en Heckers Caſe, 13 Henric. 8. 12. ou Maiſter del Hoſpitall ad preſent luy meſme al Eſglíſe, de que le Advouſon appent al dit Hoſpitall, coment que le Ordinarie ad luy admit, uncore fuit adjudge la, que le Preſentation eſteant void, nul plenarty fuit gain per luy en le dit Eſglíſe. A fortiori en ceſt Caſe, ceſt Vicarage ne ſerra dit plein del Evelque de Oſſory, ou il meſme ent, & priſt poſſeſſion de ē, ſans eſtre unques preſent, inſtitut ou induct, & ſans ordinary Collation, ou aſcun legal ceremony.

Et p̄ ceo p̄ l'Rule del Canon Ley auxi, ceſty que vient eins per Commendam non eſt Prælatus, ſed Procurator tantum, & eſt niſi cuſtos, ſeu adminiſtrator, & jus in Eccleſia non habet, 6. Decretal. cap. Nemo; & Conſtitut. Othoboni, cap. de Commendis Eccleſiarum, fol. 65. Et ove ceo accord 27 Henr. 8. 15. ou eſt dit que le Cardinall de Yorke ad l' Abby de S. Albans in Commendam, & uncore ne fuit Abbe.

Uncore ceſt differente fuit agrée, que ſi Clerk ſoit preſent al Benefic̄ ove cure, & ſoit admit, inſtitute & induct a ceo, iſſint que l'Eſglíſe ſoit plein de luy, ſi a p̄s il ſoit p̄ſent al auk̄ Benefice incompatible, ou elect al Evelquery, & devant que il ſoit inſtituk̄ al ſecond Benefic̄, ou ſoit create en Evelqe, il obtain Faculty ou Diſpenſation de retain̄ l' prim̄ Benefic̄ perpetuæ Commendæ titulo, que eſt durant ſon vie, ceſt Faculty ou Diſpenſation ſerra de tiel effect, que le primer Benefice ne ſerra void per le acceptance del ſecond, ou per le promotion al Evelquery, mes que il remainera plein & perfect Incumbent del primer Benefice durant ſon vie.

Et le Faculty ou Diſpenſation en ceſt caſe ne fait aſcun tort ou injury al Patron. Car le Patron ne preſenteroit arrere tanque le prochein Avoidance, & le Eſglíſe en ceſt caſe ne devient unques void per reaſon del Diſpenſation, que prevent le Avoidance. Vid. Rebuff. De praxi beneficiorum 3. part. ſignatur. Si Papa diſpenſat cum promoto ad

Epiſcopatum

Epiſcopatum ut retineat ſua Beneficia, poterit retinere etiam quæ ſub patronatu laicorum ſunt, quia non agitur de præjudicio Patroni, cum non vacet Beneficium: que ad eſtre adjudge, dit il, in Deciſ. Rotæ 331. Car la ley que ordaine que le primer Benefice ſerra void per acceptance del ſecond, poet eſtre diſpenſed with. Et iſſint eſt de la ley que ordaine que quant home eſt fait Eveſque, que les auters Benefices ſerront void, come Thirning dit 11 H. 4. 213. b. Car ceux leyes ſueront faits per eccleſiaſticall policy, & p ceo ch le policy poet diſpenſer ove ceux leyes. Mes la ley que prohibit tort ou injury al tierce perſon ne poet eſtre diſpenſed with p les reaſons avantdit. Et pur ceo le Benefice que eſt un foits void, & le prochein Avoidance de ceo eſchue al Patron, ne poet eſtre priſe & occupy per vertue del alcun tiel Licence ou Faculty. Et accordant a ceſt difference ſont pluſors Caſes ruled in noſtre livres.

11 Henr. 4. 170. 213. 229. en le notable Caſe del Eveſque de S. Davids ſoventfoits cite devant, eſt reſolve per Thirning, Hankford, & le melior opinion de ceſt livre, que quaunt un Prebendary de Sarum fuit elect al Eveſquery de Saint Davids, & devant que il fuit create en Eveſque il obtaine Diſpenſation del Pape de retainer touts les auters Benefices, nient obſtant, &c. & apres il eſt create & conſecrate Eveſque; que le Roy en ceſt caſe n'avera Quare impedit vers l'Eveſque pur le Prebend, ne action ſur le Statute de 25 Edw. 3. que done preſentment al Roy, ou le Pape per Proviſion done alcun Benefice dont le Patronage appent al Spirituall perſon. Car en ambideux caſes il covient eſtre un Avoidance del Benefice devant que le Roy poet preſenter; ou en ceſt caſe devant l'Eſgliſe ne devient void, mes l'Incumbent continue eins de ſon eigne title. Et pur ceo Hankford la dit, que l'Eveſque, ſur ceſt Diſpenſation de retainer, ne paiera First-fruites arrere pur ceſt Benefice. Et ſi le Roy ad primer & prochein Avoidance de un Benefice, & apres graunt tiel Faculty ou Diſpenſation al Incumbent de retainer ceſt Benefice, nient obſtant que il ſerroit create en Eveſque, & apres l'Incumbent eſt fait Eveſque, uncore ceo ne amount al Preſentation, mes que apres le mort del Incumbent le Roy preſentera un auter Clerke a ceo: car nul

Avoidance ſuit de ceſt Benefice devant le mort del Incumbēt. Mes de auē part fuit clārement reſolve en le dit Caſe del Evelque d Saint Davids, q̄ ſi le Diſpenſation ad eſtre fait apres q̄ le Prebendary uſt eſtē create Evelque, q̄ le Prebend ad eſtē void, & nul Faculty puiſſoit luy ennabler de retainer ceo envers le Roy.

Et p̄ t̄ en temps H. 6. quant Henry Beaufort, grand Uncle del Roy, eſteant Evelque de Wincheſter, fuit fait Cardinal, & apres ceo il purchaſe d̄l Pape un Bull declaratory, q̄ nient obſtant q̄ il fuit fait Cardinall, que ſon Evelquery de Wincheſter ne fuit void, p̄ que il puiſſoit t̄ retainer come devant; uncore fuit tenus que l' Sea del Wincheſter fuit void p̄ laſſumption del Cardinalſhip, q̄ exempt l'Evelq̄ del Juriſdictiō de ſon Metropolitan. Et pur ceo le Cardinall fuit en Caſe d Præmunire, p̄ q̄ il purchaſe ſon pardon, que eſt deſtē trove enter les Charters 4 Henric. 6. in Archivis Turr' London. 6 & 7 Elizab. Dier 233. a. Jo. Packhurſt eſteant elect al Evelquery de Norwich, devant q̄ il fuit create Evelque obteine Diſpenſation d Archevelq̄ de Canterbury, (p̄ vertue d̄l Statute d Faculties) de retainer un Parſonage que il avoit devāt in Commendam, pro tribus annis, viz. à feſto ſancti Michaelis in Anno Dom. 1560. uſque ad idem feſtum que ſerroit en l'An. 1563. Devant le p̄imer feaſt d Saint Michael, Packhurſt eſt create Evelq̄, & puis il reſigne le Benefice. Et le queſtion fuit, ſi ceſt Benefice vacavit p̄ Reſignation del Packhurſt, ou p̄ ſon p̄motion al Evelquery. Et fuit adjudge, que l'Eſglile ſe voida per ſon Reſignation: que p̄ove que per vertue del dit Diſpenſation il continue Parſon tanque il ad reſigne. Vide Natur'Br' 36.h. Si Parſon que ad Diſpenſation de tener ſon Rectory ſoit create en Evelque, & puis le Patron p̄ſent auē Incumbent, que eſt inſtitute & induct, ore l'Evelq̄ avera Spoliation vers ceſty Incumbent: que p̄ove que ſon reall poſſeſſion in le Parſonage touts foits continue per vertue del Diſpenſation. Iſſint que Faculty ou Diſpenſation a tener Benefice in perpetuam Commendam eſt bon & effectuall a tiel perſon tantum que eſt plein & p̄fect Incumbent al temps del Diſpenſation fait a luy, & nemy a ceſty que nad riens en le Benefice.

Ceo appiert auſi per Hollands Caſe en le 4. part de les Repoꝛts

Reports del Seignior Coke 75. Car la Jo. May aiant le Parsonage de North-creake, que fuit ouster l' annuel value d̄ 8. li. accept aut̄ Benefic̄ incompatibl', issint q̄ l' prim̄ Benefice fuit void. Ap̄s il fuit elect al Evesquerie d̄ Carlile, & devant son creac̄, il obtain Faculty de retainer le Parsonage de North-creake in Commendam, & fructus & emolumenta ad usus suos convertere, &c. uncore fuit adjudge, que cest Faculty ne luy aidera p̄ l' Benefice que fuit void, car il ne fuit Parson al temps del Dispensation graunt a luy.

A mesme le intent est Digbies Case en le 4. des Reports del Seignior Coke 79. Un Merrick, Parson de Norton, que fuit del annuel value de 8. li. fuit present al Esglise de Stanes, & admitt & institute a ceo, per q̄l Institution l' prim̄ Benefice fuit void; uncore devant Induction il obtaine Qualification & Dispensation, Ecclesiam de Stanes recipere, & retinere quoad vixerit, &c. Uncore ceo vient trop tard d̄ preserver le prim̄ Benefice, que fuit void d̄vant. Vid. 18 El. Dyer 347. Doctour Westons Case.

Sur touts ceux reasons & authorities ils concludont, que cest Faculty ou Dispensation d̄ p̄nd̄ un void Benefice in perpetuam Commendam fuit void. Mes si Benefic̄ soit plein de Incumbent, Faculty poet estre graunt a cest Incumbent de retainer c̄ in perpetuam Commendam, nient obstant que il prist aut̄ Benefice incompatible. Et p̄ c̄ les Bulls de Provision grant per le Pape, q̄ux fueront en nature de Faculties de p̄nd̄ Beneficia vacantia vel vacatura, ne unq̄s fesoent l' Provisor able d̄ p̄nder & occupier un Benefice q̄ serroit void de sa teste demesn, sans Institutiō, Admissiō, ou Inductiō. Car sil ad enter en tiel manner, la Ley ust adjudge luy abator & disturbor, & Quare impedit gisoit vers luy. Mes si tiel Provisor ad estre admitt, institute & induct, donques serroit remove per l'Estatut̄ de Provisoribus, 29 Edw. 3. 44. a. & 11 Henric. 4. 213. 229. Mes le Roy removeroit tiel Provisor per Quare impedit, ap̄s Institution & Induction, 19 E. 3. Fitz. Quare non admisit 7, 8.

Et issint hors de tout ceo que est dit devaunt result cest difference enter Faculty de prender Benefice, & Faculty de retainer Benefice: viz. que Faculty grant al un que nest Incumbent de prender un void Benefice est void; & Faculty al un

q̃ est Incumbent de un Benefice de retainer mesme le Benefice, est bon. Et per consequence cest Facultie grant al Evesque de Ossory esteant void, le Vicarage avantdit ne fuit unques plein de luy, per q̃ le Roy ad bon title a presenter a ceo per laps.

MEs del auter part fuit argue per le Counsell des Defendants, 1. Que cest Facultie grant en le forme avantdit fuit bon, & doet estre approve & allow pur bon en cest Court. 2. Que cē Facultie fuit bien execute per le entry del Evesque en le Vicarage, sans ascun Presentation, Institution & Induction. 3. Que l'Evesque aiant enter & occupy cest Benefice per vertue de cest Faculty, le Esglise fuit fait plein de luy, issint que null title puissoit devolver al Roy per lapsum temporis durant le vie del Evesque.

1. QUant al primer point, ils arguont, q̃ cest Facultie fuit bon, & doet estre allow pur bon in cest Court, pur ceo que est bien garrant per un positive Ley del Realm, viz. per le Statute de 28 H. 8. cap. 20. per que les Commissioners ont power & authority a doner & graunter per lour discretions tielx Dispensations, Licences, ou Faculties, p̄ causes nient repugnant a les Saint Scriptures & Leyes de Dieu, come en temps paravant ont estre use & accustome destre obtaine de le Sée de Rome: & que chescun Dispensation, Licence ou Faculty graunt per vertue de cest Act serra approve p̄ bon & effectual en Ley en touts Courts & Jurisdictions, cibien Spiritual q̃ Temporal, &c.

Et a proū q̃ cest Faculty ou Dispensation grant al Evesq̃ de Ossory fuit bñ grant ꝑ l'dit Act d̄ Parliam̄t, fuit mr̄e, 1. q̃ tiel Faculty ou Dispensation fuit use & accustome destre grant & obtain en l'Court d̄ Rome d̄vant l'fesans d̄ cest Statut̄: 2. q̃ le cause p̄ q̃ cest Faculty ou Dispensation est grant nest repugnāt ou cōtrary a la Saint Scripture ou Ley de Dieu: 3. q̃ l'Faculty en cause de ceo nest unreasonable, ou mérm̄t encount̄ Ley. mes est agréable, & poet bien estoier, ove les Rules de la Ley Dengleterre.

1. Et p̄ monstr̄ que tielx Faculties ou Dispensations ont use destre graunt en le Court de Rome devaunt le Statute, l'Originall del Commenda fuit primerm̄t enquire. Et fuit

ſuit dit, que le Pape Leo 4. Anno Domini 848. aut eo circiter, primerment invent le Commendam. Come appiert libr. Decretorum cauſa 23. quæſt. 2. ou eſt dit, Unde Leo 4. ſcribit, Qui plures Eccleſias retinet, unam quidem titulatam, alteram vero ſub Commendatione tenere debet. Car ou per les auncient Canons & Councills un home ne puiſſoit aver forſque un Benefice, & uncore per experience fuit trove convenient que alcun foits, viz. en caſe de Neceſſitie ou Utilitie del Eſglife, un home averoit le charge & les fruits de pluſors Benefices, ceſt diſtinction fuit invent & allow, que coment que home naveroit forſque un Benefice in Titulo, uncore il puiſſoit aver auter Benefice in Commenda, viz. que auter Benefice puiſſoit eſtre commend & commit a ſon cuſtody & cure, tanque un able Incumbent fuiſſoit provide pur ceo.

Mes apres, grand abuſe eſteant trove en le graunting de ceux Commenda's per les Ordinaries, (car omnium rerum quarum eſt uſus poteſt eſſe abuſus, virtute ſolum excepta, dit Ariſtotle) un auter Canon fuit fait en le Councill de Lions Anno Domini 1274. pur reformation de ceo, come appiert libr. 6. Decretal. de Elect. & Elect. poteſtat', cap. Nem'. Nemo deinceps parochialem Eccleſiam alicui non conſtituto in legitima ætate vel ſacerdotio commendare præſumat; nec tali, niſi unam, & evidenti neceſſitate vel utilitate Eccleſiæ ſuadente. Hujuſmodi autem Commendam rite factam declaramus ultra ſemeſtre temporis ſpatium non durare, &c. Mes le gloſſe la dit, (come eſt monſtre devant) Iſta conſtitutio non comprehendit Romanum Pontificem, ideo Romanus Pontifex poteſt perpetuo commendare; iſſint que le Pape, nient obſtant ceſt Canon, ad power de doner Benefices in perpetuam Commendam.

Et revera depuis le dit Councill de Lions, ſicome le Pape ad reſerve a luy meſme le ſole power a doner Benefices in perpetuam Commendam, iſſint il reduſoit ceſt power in actum, & uſoit & practiſoit ceo en touts Realmes de Chriſtendome. Specialment les Papes queux fueront reſident al Avignon en France, en le temps Henr. 2. Ed. 1. Ed. 2. Ed. 3. fueront fort liberall, non ſolement en graunting des Proviſions, (encounter queux noſtre Statutes fueront fait en temps Ed. 1. & Ed. 3.) mes en donant touts ſortes d' Eccleſiaſticall

siasticall Benefices in Commendam perpetuam. Et coment q̄ primerment ceo fuit fait pur supporter le dignity des Cardinals, come fuit profesie per le Pape Clement 6. en son Epistle al Ed. 3. que est en le Histozy de Walsingham fol. 150. b. uncoze apres ceux Eaces fueront purchase per auters Ecclesiasticall persons de touts degrés, en touts nations de Chriſtendome, & specialment en Engleterre & Ireland. Car domesticis exemplis abundamus en cest point, viz. que tiels Faculties ou Dispensations, a tener Ecclesiasticall Dignities & Benefices in Commendam perpetuam, fueront graunt & obtaine en le Court de Rome.

En temps Henr. 3. viz. Anno Domini 1253. Matth. Paris Histor. magn. 848. le grand Clerke Rob. Grosthead Ebelque de Lincoln, que se oppoloit forment encounter les Provisions del Pape, complaine la de cest novel Provision per voy de Commenda. Cæterum, dit il, quod videre non consuevit, concedit Papa ut aliquis Episcopatum obtineat, nec tamen Episcopus existat, sed electus sempiternus. Et per meſme cesty Matth. Paris en meſme l'Histozy 914. est recozd, que Anno Domini 1257. Ægidius de Bridleford, Electus Sarisburiensis, manifestavit palam quod Romæ strenue impetraverat, ut scilicet liceret ei pristinos redditus retinere, ac etiam Decanatum; quod nuper novum habebatur, sed jam toties permissum nulli stuporem generavit.

Apres ceo, appiert per le libze 41 Edw. 3. 5. que un W. aiant un Prebend en le Cathedzall Elglise de Sarum, q̄ le Pape, devant son consecration, ad done a luy ses Benefices queux il avoit devant; & le Roy recitant cest don del Pape ad graunt a luy ses temporalties: sur que fuit adjudge que cest Prebend ne devient void, mes que l'Ebelque retiendza ceo apres son consecration.

Il appiert auxi en le dit Case del Ebelque de S. Davids 11 Henr. 4. soventfoits cite devant, que en temps del Edw. 3. Edmund le Boigne de Bury, que fuit attendant en le Court del Edw. 3. avoit pluszs Benefices per tiel Dispensation, come est note la per Thirning fol. 229. b. Auxi Hankford dit en meſme le Case fol. 191. a. que il ad estre view, que un home ad estre Abbe de Glastonbury & Ebelque auxi dun auter Elglise simul & semel, & avoit le possession dux & les dignities a un meſme temps.

Auxi

Auxi le dit principall Caſe en 11 Henr. 4. monſtre, que Henr. Chicheley, (que fuit apres Archevelque de Canterbury) eſteant un Prebend en le Cathedrall Eſglíſe de Sarum, fuit elect Evelque de Saint Davids, & devant ſon conſecration, le Pape, recitant per ſon Bull que il fuit elect Evelque de Saint Davids, graunt a luy Faculty & power de tener & enjoyer touts les auters Benefices, tanque le Pape ad auterment ordaine, &c. Vid. Nov. Deciſion. Rotæ 331. meſme ceſt point, q̃ fuit argue 11 Henr. 4. bien debate.

Et que ceux Faculties ou Diſpenſations a tener Benefices in Commendam fueront graunt en le Court del Rome en temps del Henr. 5. appiert en Linwood libr. 3. de Præbend. cap. Auditis, verb. Diſpenſatione. Et en temps Henr. 6. Henry Beaufort le graund uncle del Roy, eſteant fait Cardinall, obtaine Diſpenſation del Pape de retainer l'Evelquery de Wincheſter in Commendam, come devant eſt monſtre. Et coment que fuit tenus adonques que ceſt Diſpenſation deignoit trop tard, eſteant graunt apres que l'Evelque fuit create Cardinall; uncore apres, en temps Henr. 8. le Cardinall Wolſey, aiant devant que il fuit create Cardinall obtaine Bull del Pape de retainer l'Archevelquery de Yorke come perpetuall Adminiſtrator, & l'Abbey de Saint Albans in perpetuam Commendam, il teignoit ambideux durant ſon vie, per vertue de ceſt Diſpenſation. Vid. 27 Henr. 8. 15. b.

Per ceux examples & auctorities eſt manifeſt, que devant le feſans de ceſt Statute de Faculties tiels Diſpenſations fueront eu & obtaine en le Court de Rome, a tener in Commendam Eccleſiaſticall Benefices en Engleterre.

Et quant a ceſt Realme de Ireland, ceux Diſpenſations de Pape fueront cy frequent icy, que en temps Edw. 4. un ſpeciall Act de Parliament fuit fait encounter les Commendams graunt per le Pape al Eccleſiaſticall perſons de ceſt Realme. Vid. l'Eſtatute de 7 Edw. 4. cap. 2. per que eſt reciſe, That now of late divers men of Holy Church, ſuing to the Court of Rome, have purchaſed Buls from the Holy Father the Pope, to have as well Abbeys, Priories, and other Dignities, as Parſonages and Vicarages, in Commendam, to the extinguiſhment of Divine ſervice, &c. pur que il eſt ordaine, That whatſoever man of Holy Church do purchaſe any manner of Dignity, Parſonage or Vicarage, by Bulls of the Pope, to hold in Com-

Commendam, and the ſaid Bulls, Parſonages or Vicarages do accept, he ſhall be out of the King's Protection, &c. And that no pardon or licence of the King made, or to be made, be available in this behalf, but be utterly void, if it be not by Act of Parliament. Et ceſt ſpetiall Act encounter les Commendams del Pape fuit fait en ceſt Realme, pur ceo que les Statutes faites encounter Proviſors en temps Edw. 3. parlont tantſolement de Reſervations, Collations & Proviſions del Pape, queux parols n'extendont al Commendams, come Hankford tient 11 Henr. 4. 213. a.

2. Le cauſe pur que ceſt Faculty ou Diſpenſation fuit graunt neſt repugnant ou contrary al Saint Scripture ou Ley de Dieu. Car plurality de Benefices neſt prohibit per le Scripture ou Ley de Dieu; mes è contra eſt un expreſſe Text que dit, 1 Timoth. c. 5. Qui bene præſunt presbyteri duplici honore digni habeantur. Dicit enim Scriptura, Non alligabis os bovi trituranti, &c. Et eſt alter Text que require ut Epiſcopus ſit hoſpitalis: & le principall cauſe de graunting ceſt Faculty fuit pur enabler le Eveſque a maintainer Hoſpitality; come touts Appropriations & Unions fueront fait pur meſme le cauſe. Auxi l'Office que l'Eveſque ad en l'Egliſe eſt de grand Dignity, quel Dignity ne poet eſtre preſerve ſans rountenance & maintenance. Pur que quant les revenues del Eveſquery ne ſont ſufficient, l'Eccleſiaſticall polity, que done competent addition per voy de Commendam, ne ſerra dit repugnant ou contrary al Ley de Dieu.

Auxi il poet bien eſtoier ove reaſon & religion, que un Eveſque avera & retainera un particular Benefice ove cure deins ſon Dioceſe demeſne, pur ceo que il ad le generall cure de touts Egliſes la; habet curam Curarum; pur que ſur cheſcun Inſtitution il dit, Accipe curam tuam & meam. Et ſur ceſt reaſon en auncient temps pluſors Rectories ove cure ont eſtre appropriate al Eveſqueries: come les Rectories de Eaſtmean & Hambleden ſont appropriate ad menſam Epiſcopi Winton, & l'Eveſque de Sarum ad pluſors Rectories appropriate a ſon Sea. En meſme le manner avoent le Primate de Armagh & l'Archeveſque de Dublin en ceſt Realme certaine Rectories appropriate ad menſam en lour ſeverall Dioceſes. Et revera devant le diviſion de pariſhes, cheſcun Eveſque avoit

voit le diſtribution de touts les diſmes deins ſon Dioceſe, come Beda dit en ſon Eccleſiaſticall Hiſtory, lib. 1. ca. 28.

3. Ceſt Faculty ou Diſpenſation (coment que Diſpenſationes non debent trahi ad communem legem, come les Canoniſts diont) neſt repugnant al rules del Common Ley Dengleterre. Car la Common Ley Dengleterre ne prohibit Pluralities, ne fait l'inferior Benefice void, ſi incumbent ſoit create en Eveſque; mes l'ancient Eccleſiaſticall Ley Dengleterre, ove ceo q̄ l'Roy puiſſoit toutsfoits diſpenſer per l'rule del Common Ley, come avant eſt monſtre. 11 Henr. 4. 213. a. b. Plow. Comment. Grendons Caſe, 503. b. 11 H. 4. 12. a.

Et nota que l'dit Statute 7 Edw. 4. cap. 2, enact en ceſt Realme, que ordaine que ceſty que purchaſe Bull del Pape de tener Benefice in Commendam ſerra hors del Protection del Roy, prohibe auxi q̄ Pardon ou Licence del Roy ne ſerra availeable en ceſt Caſe: q̄ imply, que le Judgement del Parliament adonques fuit, que Licence del Roy ſerroit availeable per le rule del Common Ley en tiel caſe, accordant al opinion d̄ Hankford 11 Henr. 4. cite devant. Et eſtoit ove bon reaſon que le Roy diſpenſera ove l'Eccleſiaſticall Ley touchant Benefices, pur ceo que le Roy & ſes lay ſubjects fueront les donors de touts Benefices al Eccleſiaſtical perſons; & pur ceo Marſil. Patavinus appel les Benefices del Eſglife Eleemoſynas laicorum.

Mes la verity eſt, que tiels Faculties ou Diſpenſations graunt per le Pape touchant Eccleſiaſticall Benefices en Engleterre fueront toutfoits encounter la Ley del Realme, car fuit mere uſurpation ſur la Corone Dengleterre devant les Statutes faits encounter Proviſors. Et ceux Statutes fueront fait en declaration del Common Ley en ceſt point. 12 Edw. 2. Fitz. Quar. imp. 169. 19 Ed. 2. Fitz. Quar. non admiſit 7. 15 Edw. 3. Fitz. Quar. imp. 160. 21 Edw. 3. 40. 11 Henr. 4. 230. a.

Et quant al injury que eſt ſuppoſe deſtre fait al Patron per le graunting & executing de ceſt Faculty en ceſt caſe, eſt manifeſt, come ceſt Caſe eſt, que le Patron neſt prejudice. Car le Eveſque ne enter en le Vicarage tanque ceo ad eſtre void per tempus ſemeſtre, & iſſint title accrew al Eveſque meſme a collater al ceo per laps. Et ſur ceſt reaſon Rebuffus, libr. De praxi beneficiorum, miſt un rule,

quod quando laici patroni non præſentaverint infra tempus à jure præfixum, ita quod collatio devoluta ſit ad ſuperiorem per lapſum temporis, Papa de jure providere poteſt, ſine derogatione juriſpatronatus laicorum.

2. SEcondment fuit argue per le counſell des defendants, que ceſt Faculty fuit bien execute per acceptance & entrie del Eveſque en le dit Vicarage, ſans preſentation, inſtitution ou induction, car ceux acts ou ceremonies ne ſont toutſoits de neceſſitie deſtre uſe en conferring dun Parſonage ou Vicarage, que poet eſtre bien fait divers voies ſans preſentation, inſtitution & induction: 1. per voy de Appropriation; 2. per voy de Union; 3. per voy de Permutation; 4. per voy de Commendam; & en temps parabant, quant le Pape uſurpoit juriſdiction en Engleterre, fuit un 5. voy, viz. per voy de Proviſion. 1. Quant al Appropriation, vid. Plow. Comment. Grendons Caſe, 500. a. 503. a. ou appiert que le Roy (q̄ ad ſufficient authority a fair ceo, come Plow. la dit) ad en ſon Patent d̄ Appropriation la diſpenſe ove admiſſion, inſtitution & induction, & ad done power al Deane & Chapter de Wigorn, a q̄ l'Appropriation fuit fait, d̄ enter en l'Parſonage, & de retainer ceo, ſans auter ceremony: & ceo fuit reſolve & adjudge bon Diſpenſation en ceſt caſe. Vid. l'forme del Patent d̄ Appropriation en le dit Caſe de Grendon, Plow. Comment. 494. a. & compare ceo ove le Faculty ſupra. Car eſt grand reſemblance, come ſemble, enter Commendam perpetuam & Appropriation; le difference eſt en le temps de continuance: car Commenda perpetua eſt durant le vie del Commendatary tantum; & Appropriation eſt en perpetuity.

2. Quant al Union, vid. 11 Henr. 7. 8. ou Chappell eſteant plein dun Incumbent fuit unite al Magdalen Colledge en Oxford, & apres l'Incumbent reſigne, le Preſident & Scholars entront en le Chappel, ſans auter donation ou induction: & ceo agree ove Rebuffus in Regula de unionibus, ou il dit, Poſſeſſio apprehendi poteſt propria authoritate in unione. Vid. auxy 50 Edw. 3. 27. 40 Edw. 3. 48.

3. Quant al Permutation, vid. 2 Henr. 4. 11. a. ou eſt dit, q̄ ſur Permutation entry eſt loiall ſans pluis. Vid. auxy 21 E. 3. 6. 7. Vid. Rebuff. in Praxi beneficiorum, titulo De collationibus, 663. quot ſunt requiſita in permutatione beneficiorum.

Et fuit

Et ſuit dit, que tiel Faculty, de prender Beneficium vacaturum apres le mort del Encumbent, fuit ſemble al graunt del un Reverſion de terre apres le mort del tenant pur vie; en quel caſe coment que tenant pur vie beſoigne ô aver Livery de ſeiſin, uncore le grauntée del reverſion apres le mort del tenant pur vie poet enter propria auctoritate, ſans tiel ceremony de Livery.

Fuit auſi dit, que la Ley diſpenſera ove formall inſtitution, collation & induction en ceſt caſe, pur ceo que l'Evеſque meſme eſt deſtre inveſt en le Benefice, & pur ceo ſon acceptance & entry eſt ſufficient: Come la Common Ley diſpenſe ove expreſſe Atturnament, ou reverſion eſt graunt al ceſty que doet atturner; & ove actuall delivery del legacy, ou legatary eſt fait executor; (que poet auſi payer luy meſme per voy de retainer;) & ove aſſignement de Dower, ou feme eſt garden en Socage, & poet endower luy meſme de la pluis beale.

Et ſicome en auncient temps Proviſion del Pape amountoit al Collation, & ſur ceo le Provilor puiſſoit enter, come eſt tenus per Plow. en Grendons Caſe, 500. Et 11 Hen. 4. 220. Hankford dit, que Proviſion eſt come inſtitution, & acceptance come induction: iſſint ceſt Faculty de prender le Benefice, ove acceptance & entry del Evеſque, amount al collation & induction.

3. DArrainment, fuit argue per le counſell des defendants, que quant l'Evеſque ad enter & occupie ceſt Benefice per vertue de ceſt Faculty, que immediatement l'Eſgliſe fuit fait plein de luy, & iſſint nul title de preſentation fuit devolve al Roy per lapſum temporis, durant la vie del Evеſque.

Et a prover ceſt darrain point, ils dient que ceſty que ad un Benefice per Canonicall title eſt plein & perfect Incumbent, & l'Eſgliſe eſt plein de luy: mes ceſty que ad Benefice virtute Commendæ perpetuæ ad ceo per Canonicall title: & pur ceo tiel Commendatary eſt plein & perfect Incumbent, & l'Eſgliſe eſt plein de luy. A prover ceſt argumēt Linwood ſuit cite de Filiis Presbyt. cap. Cum à jure, verb. Ullo titulo, ou il define Canonicall title en ceſt manner, Titulus Canonicus eſt jus ſpirituale, ſive cauſa habendi beneficium

Eccleſiaſticum ; qui poteſt eſſe per viam Inſtitutionis, Collationis, Electionis, Commendæ, vel alterius proviſionis. Et in Conſtitut. Othoboni annex al Linwood, cap. Miſerabil', verb. Commendare, fol. 65. eſt dit, quod habens Commendam habet titulum Canonicum approbatum à jure propter neceſſitatem vel utilitatem Eccleſiæ, & ideo conceſſa Commenda Eccleſia non vacat.

Et pur ceo, ſicome admiſſion & inſtitution tantum eſt bon Title, & fait plenarty entet common perſons, & inſtitution & induction ou inſtallation eſt bon Title vers le Roy, 22 Henr. 6. 27. 44 Ed. 3. 3. & ſans tiel Title home navera briefe al Evelque en Quare impedit, 33 Henr. 6. 1. 12 Hen. 4. 11. 22 H. 6. 44, 45. 19 Edward. 4. 9. iſſint Commenda, que amount al admiſſion & inſtitution, & le entry del Commendatary virtute Commendæ, eſt bon Title, & fait plenarty en teſt Caſe. Et teſt jus ſpirituale, ſive cauſa habendi Beneficium Eccleſiaſticum, eſt appell Title, pur ceo que qui titulum habet ad Beneficium, come Rebuffus dit, poteſt nominari & ſubſcribi ſub titulo illius Beneficii, adeo ut Beneficium ſuum dici poſſit. Et habet in eo plenum jus, & fructus ſuos facit, ut maritus habet jus in uxore & omnibus bonis ejus.

Mes ou eſt dit, que home ad Canonicall title per vertus del Commenda, ceo eſt deſtre entend del Commenda perpetua, & nemy del Commenda temporalis. Car Commenda temporalis eſt forſque Sequeſtration, & poet eſtre graunt per cheſcun Ordinary pur tempus ſemeſtre, come eſt monſtre devant. Et p ceo tiel Commendatary non eſt Prælatus, nec Maritus Eccleſiæ, nec facit fructus ſuos, ſed eſt adminiſtrator tantum, & cuſtos Eccleſiæ. Et tiel Commenda non eſt titulus, nec facit titulum, ſed eſt quoddam depoſitum, juſques a ceo que ſufficient Incumbent ſoit provide pur le Eſgliſe. Et pur ceo tiel Commenda eſt communement graunt quant le Patron ne preſent un able perſon, ou quant le Eſgliſe eſt litigious.

Mes Commenda perpetua, que continue durant le vie del Commendatary, ne poet eſtre graunt per alcun inferior Ordinary, mes ſolement per le Pape, en tiel pais ou il ad juriſdiction, ou per le Roy ou ſes Delegates en teſt Realme. Et teſt Commenda eſt titulus Canonicus ; nam militat eadem ratio in perpetuis Commendis quæ in aliis titulis, libr. 6. de Electionibus, cap. Nemo. Et iſſint ad eſtre ſovent

ſoits

ſoits adjudge in Rota, come Gomes dit, in regul' de Triennali poſſeſſore, ou il argue ceſt point pro & contra alarge, ou il dit, q̃ le Faculty del perpetua Commenda eſt ampliſſima diſpoſitio, & habet ubertatem verborum, viz. licentiam & facultatem fructus omnes percipiendi, & in proprios uſus convertendi, &c. Quæ verba important collationem & titulum, & non ſimplex depoſitum. Et ouſter il dit, Ille dicitur verus & legitimus titulus qui à lege vel homine poteſtatem habente eſt conceſſus: & ſigna veri & legitimi tituli ſunt perpetuitas & fructuum diſpoſitio, quæ duo concurrunt in Commenda perpetua. Il dit auſi la, quod permutatio poteſt eſſe de Commenda perpetua ad Commendam perpetuam: & de tiel Commenda ad titulum, quod talis Commendatarius poteſt locare omnia bona Eccleſiæ; quod Commenda eſt inſtar Collationis, & ſicut reſervatio Papæ vacat per Collationem, ſic per Commendam perpetuam, ſecus per temporalem; quodque per Commendam perpetuam Beneficium deſinit vacare, & fit plenum, quaſi per viam Collationis.

Rebuffus auſi in libr. De praxi beneficiorum, 135. agrée ove Gomes, ou il dit, Per mortem Commendatarii perpetui Beneficium vacat, non ut prius, ſed per mortem; & hæc eſt praxis in Francia. Commenda perpetua permutari poteſt cum titulo, quod ſæpius vidi. Commendatarius perpetuus fructus recipit, confert, locat, ac alia omnia facit ſicut habens titulum. Commenda perpetua non poteſt revocari.

Fuit ouſter note & obſerve, que en le Canon Ley il y ad 2 ſoꝛts de Uicarages, Vicaria temporalis, & Vicaria perpetua. Vicaria temporalis fuit compare al Commenda temporalis, p̃ ceo q̃ tiel tempoꝛal Uicar non habet titulum, ſed ſervit alieno nomine, & proprie curam non habet. Secus eſt de Vicaria perpetua, quæ eſt incompatibilis cum alio Beneficio, & habet curam animarum, & talis Vicarius habet titulum Canonicum; & Quar. impedit giſt de tiel perpetuall Uicarage. Fitz. N. Br. 32. h. Regiſtr. 31. a. Et tiel Uicar avera Juris utrum de terres annex ou done a luy perpetualment, per le Stat. de 14 Edw. 3. cap. 17. Vid. 40 Edw. 3. 28. b. ou Finchden dit, que coment que ad eſtre tenus que Uicar navera action de ſes poſſeſſions vers nul perſon, uncoꝛe la Ley eſt change en ceſt point, & per reaſon, quant il eſt endow a luy & ſes ſucceſſoꝛs perpetualment.

Et ceo

Et ceo fuit le substance des arguments ex utraque parte fait en cest Case. Car nul Judgement est uncore done en ceo. L'Atturney generall & Bolton Recorder de Dublin & Oliver Eustace le Civilian fueront a Counsell la ove Clerke del Roy; & William Talbot, James Briver, & John Haly Doctor del Civil Ley, ove les defendants.

Hill. 4 Jacobi.

The Caſe of Præmunire,

OR

The Conviction and Attainder of *Robert Lalor* Prieſt, being endited upon the Statute of 16 *Rich.* 2. *cap.* 5.

THis *Robert Lalor*, being a Native of this Kingdome, received his Orders of Prieſthood above thirty years ſince at the hands of one *Richard Brady*, to whom the Pope had given the title of Biſhop of *Kilmore* in *Vlſter*; and for the ſpace of twenty years together his authority and credit was not mean within the Province of *Leimſter*. He had alſo made his name known in the Court of *Rome*, and held intelligence with the Cardinall who was Protector of this Nation, by means whereof he obtained the title and juriſdiction of *Vicar-general* of the See Apoſtolick within the Archbiſhoprick of *Dublin*, and the Biſhopricks of *Kildare* and *Fernes*. This pretended juriſdiction, extending well-nigh over all the Province of *Leimſter*, he exerciſed boldly and ſecurely many years together, untill the Proclamation was publiſhed, whereby all Jeſuites and Prieſts ordained by forrein Authority were commanded to depart out of this Kingdome by a certain time prefixed. After which time he began to lurk and to change his name, howbeit at laſt he was apprehended in *Dublin*, and committed to priſon in the Caſtle there. Upon his firſt examination

Of what quality and credit Robert Lalor was.

His Apprehenſion and firſt Examination.

on taken by the Lord Deputie himſelf, he acknowledged that he was a Prieſt, and ordained by a Popiſh Titularie Biſhop; that he had accepted the title and Office of the Pope's *Vicar-generall* in the three Dioceſes before named, and had exerciſed ſpirituall juriſdiction *in foro conſcientiæ*; and in ſundry other points he maintained and juſtified the Pope's authority: onely he ſaid, he was of opinion that the Pope had no power to excommunicate or depoſe his Majeſtie, becauſe the King is not of the Pope's Religion.

His firſt Indictment and Conviction.

The next Term after he was indicted upon the Statute of 2 *Eliz.* enacted in this Realm againſt ſuch as ſhould wilfully and adviſedly maintain and uphold the juriſdiction of any forrein Prince or Prelate in any cauſes Eccleſiaſticall or Civil within this Realm. By which Statute the firſt offence of that kind is puniſhed with loſſe of goods, and one year's impriſonment; the ſecond offence incurreth the penaltie of the *Præmunire*; and the third offence is made high Treaſon. Upon this Indictment he was arraigned, convicted, and condemned, and ſo reſted in priſon during the next two Terms without any farther queſtion. He then made petition unto the Lord Deputie to be ſet at liberty: whereupon his Lordſhip cauſed him to be examined by Sir *Oliver Saint-John*, Sir *James Fullerton*, Sir *Jeffery Fenton*, the Atturney and Solicitor generall. At firſt he made ſome evaſive and indirect anſwers; but at laſt voluntarily and freely he made this enſuing acknowledgement or confeſſion, which being ſet down in writing word for word as he made it, was adviſedly read by him, and ſubſcribed with his own hand, and with the hands of thoſe who took his examination; and afterwards he confirmed it by his oath before the Lord Deputie and Councill.

His ſecond Examination.

The Confeſſion or Acknowledgement of Robert Lalor *Prieſt, made the* 22. *of* December 1606.

His Confeſſion or acknowledgement.

FIrſt, he doth acknowledge that he is not a lawfull *Vicar generall* in the Dioceſes of *Dublin*, *Kildare* and *Fernes*, and thinketh in his conſcience that he cannot lawfully take upon him the ſaid Office.

Item,

Item, he doth acknowledge our Sovereign Lord King *James* that now is to be his lawfull, chief and Supreme Governour in all cauſes, as well Eccleſiaſticall as Civil, and that he is bound in conſcience to obey him in all the ſaid cauſes; and that neither the Pope, nor any other forrein Prelate, Prince or Potentate, hath any power to controll the King in any cauſe Eccleſiaſticall or Civill within this Kingdome, or any of his Majeſtie's Dominions.

Item, he doth in his conſcience believe, that all Biſhops ordained and made by the King's authority within any of his Dominions are lawfull Biſhops; and that no Biſhop made by the Pope, or by any authority derived from the Pope, within the King's Dominions, hath any power or authoritie to impugne, diſannull or controll any Act done by any Biſhop made by his Majeſtie's authoritie as aforeſaid.

Item, he profeſſeth himſelf willing and ready to obey the King, as a good and obedient Subject ought to doe, in all his lawfull commandments, either concerning his function of Prieſthood, or any other dutie belonging to a good Subject.

After this Confeſſion made, the State here had no purpoſe to proceed againſt him ſeverely, either for his contempt of the Proclamation, or offence againſt the Law: So as he had more liberty then before, and many of his friends had acceſſe unto him; who telling him what they heard of his Confeſſion, he proteſted unto them, that he had only acknowledged the King's *Civill* and *Temporall* power, without any confeſſion or admittance of his authoritie in *ſpirituall cauſes*. This being reported unto the Lord Deputie by ſundry Gentlemen, who gave faith unto what he ſaid, his Lordſhip thought fit, that ſince he had incurred the pain of *Præmunire* by exerciſing Epiſcopall juriſdiction as *Vicar-generall* to the Pope, that he ſhould be attainted of that offence, as well to make him an example to others of his profeſſion, (for almoſt in every Dioceſe of this Kingdome there is a Titulary Biſhop ordain'd by the Pope;) as alſo that at the time of his Trial a juſt occaſion might be taken, to publiſh the Confeſſion and acknowledgement which he had voluntarily made, ſigned, and confirmed by oath before the Lord Deputie and Councill, who have likewiſe ſubſcribed their names as witneſſes thereof.

Hereupon, in *Hillarie* Term 4 *Jacobi*, an Inditement was framed againſt him in the King's Bench upon the Statute of 16 *Rich.*2.*cap.* 5. containing theſe ſeverall Points.

The Inditement of Lalor upon the ſtat. of 16 *Ric.*2.

1. That he had received a Bull or Brief purchaſed or procured in the Court of *Rome*, which Bull or Brief did touch or concern the King's Crown and dignity Royall, containing a Commiſſion of Authority from the Pope of *Rome* unto *Richard Brady* and *David Magragh* to conſtitute a *Vicar-generall* for the See of *Rome*, by the name of the *See Apoſtolick*, in the ſeverall Dioceſes of *Dublin*, *Kildare* and *Fernes*, within this Kingdome of *Ireland*.

2. That by pretext or colour of that Bull or Brief he was conſtituted *Vicar-generall* of the See of *Rome*, & took upon him the ſtyle and title of *Vicar-generall* in the ſaid ſeverall Dioceſes.

3. That he did exerciſe Eccleſiaſticall Juriſdiction as *Vicar-generall* of the See of *Rome*, by inſtituting divers perſons to Benefices with cure of ſouls, by granting diſpenſations in cauſes Matrimoniall, by pronouncing ſentences of divorce between divers married perſons, and by doing all other acts and things pertaining to Epiſcopall jurisdiction, within the ſaid ſeverall Dioceſes, againſt our Sovereign Lord the King, his Crown and dignitie Royall, and in contempt of his Majeſtie, and diſheriſon of his Crown, and contrary to the form and effect of the Statute, *&c.*

To this Inditement *Lalor* pleaded *Not guilty*; and when the iſſue was to be tried, the name and reputation of the man, and the nature of the cauſe, drew all the principall Gentlemen both of the *Pale* and *Provinces* that were in town to the hearing of the matter. At what time a ſubſtantiall Jurie of the City of *Dublin* being ſworn for the trial, and the points of the Inditement being opened and ſet forth by the King's Serjeant; the Atturney generall thought it not impertinent, but very neceſſary, before he deſcended to the particular evidence againſt the priſoner, to inform and ſatisfie the hearers in two Points.

1. What reaſon moved us to ground this Inditement upon the old Statute of 16 *Rich.*2. rather then upon ſome other later Law made ſince the time of King *Henr.*8.

2. What were the true cauſes of the making of this Law of 16 *Rich.* and other former Laws againſt *Proviſors* and ſuch as did appeal to the Court of *Rome* in thoſe times, when both the

the Prince and people of *England* did for the moſt part acknowledge the Pope to be the *thirteenth Apoſtle*, and onely oracle in matters of Religion, and did follow his doctrine in moſt of thoſe points wherein we now diſſent from him.

1. For the firſt Point, we did purpoſely forbear to proceed againſt him upon any latter Law, to the end that ſuch as were ignorant might be informed, that long before K. *Henry* 8. was born, divers Laws were made againſt the Uſurpation of the Biſhop of *Rome* upon the rights of the Crown of *England*, well-nigh as ſharp and ſevere as any Statutes which have been made in later times; and that therefore we made choice to proceed upon a Law made more then 200 years paſt, when the King, the Lords and Commons, which made the Laws, and the Judges, which did interpret the Laws, did for the moſt part follow the ſame opinions in Religion which were taught and held in the Court of *Rome*.

2. For the ſecond Point, the cauſes that moved and almoſt enforced the *Engliſh* nation to make this, and other Statutes of the ſame nature, were of the greateſt importance that could poſſibly ariſe in any State. For theſe Laws were made to uphold and maintain the Sovereignty of the King, the Liberty of the people, the Common Law, and the Commonweal, which otherwiſe had been undermined and utterly ruined by the Uſurpation of the Biſhop of *Rome*.

The true cauſe of making the Stat. of 16 R. 2. and other Statutes againſt Proviſors.

For albeit the Kings of *England* were abſolute Emperours within their Dominions, and had under them as learned a Prelacy and Clergy, as valiant and prudent a Nobility, as free and wealthy a Commonalty, as any was then in Chriſtendom: yet if we look into the ſtories and records of theſe two Imperial Kingdomes, we ſhall find, that if theſe Laws of *Proviſion* and *Præmunire* had not been made, they had loſt the name of Imperial, and of Kingdoms too, and had been long ſince made Tributary Provinces to the Biſhop of *Rome*, or rather part of S. *Peter's* Patrimony in demeſne. Our Kings had had their Scepters wreſted out of their hands, their Crowns ſpurned off from their heads, their necks trod upon, they had been made Lacquaies or Footmen to the Biſhop of *Rome*, as ſome of the Emperours and *French* Kings were; our Prelates had been made his Chaplains and Clerks, our Nobility his Vaſſals and Servants, our Commons his Slaves and Villains, if theſe Acts of manumiſ-

ſion had not freed them. In a word, before the making of theſe Laws, the flouriſhing Crown and Commonwealth of *England* was in extream danger to have been brought into moſt miſerable ſervitude and ſlavery, under colour of Religion and devotion to the See of *Rome*. And this was not onely ſeen and felt by the King, and much repined at and proteſted againſt by the Nobility, but the Commons, the general multitude of the Subjects, did exclaim and cry out upon it. For the Commons of *England* may be an example unto all other Subjects in the world in this, that they have ever been tender and ſenſible of the wrongs and diſhonours offered unto their Kings, and have ever contended to uphold and maintain their honour and Sovereignty. And their faith and loyaltie hath been generally ſuch, (though every Age hath brought forth ſome particular monſters of diſloyalty) as no pretence of zeal or religion could ever withdraw the greater part of the Subjects to ſubmit themſelves to a forrein yoke, no not when Popery was in her height & exaltation; whereof this Act and divers other of the ſame kind are clear and manifeſt teſtimonies. For this Act of 16 *Rich.* 2. was made at the prayer of the Commons: which prayer they make not for themſelves, neither ſhew they their own ſelf-love therein, (as in other Bills which contain their Grievances) but their love and zeal to the King and his Crown. When after the *Norman* Conqueſt they importuned their Kings for the *Great Charter*, they ſought their own liberties; and in other Bills preferred commonly by the Commons againſt *Shriefs*, *Eſcheators*, *Purveyors*, or the like, they ſeek their own profit and eaſe: but here their Petition is to the King, to make a Law for the defence and maintenance of his own honour. They complain, that by Bulls and Proceſſes from *Rome* the King is deprived of that juriſdiction which belongs of right to his Imperial Crown: That the King doth loſe the ſervice and counſel of his Prelats and learned men by tranſlations made by the Biſhop of *Rome*: That the King's Laws are defeated at *his* will, the treaſure of the Realm is exhauſted and exported to enrich *his* Court; and that by thoſe means the Crown of *England*, which hath ever been free, and ſubject unto none, but immediately unto God, ſhould be ſubmitted unto the Biſhop of *Rome*, to the utter deſtruction of the King and the whole Realm; which God defend, ſay they: and thereupon,

The Statute of Præmunire made at the praier of the Commons.

The effect of the Statute of 16 R. 2. cap. 5.

upon, out of their exceeding zeal and fervency, they offer to live and die with the King in defence of the liberties of the Crown. And laſtly, they pray and require the King by way of juſtice, to examine all the Lords in Parliament, what they thought of theſe manifeſt wrongs and Uſurpations, and whether they would ſtand with the King in defence of his Royal liberties, or no. Which the King did according to their Petition: and the Lords Spiritual and Temporal did all anſwer, that theſe Uſurpations of the Biſhop of *Rome* were againſt the liberties of the Crown, and that they were all bound by their allegeance to ſtand with the King, and to maintain his honour and Prerogative. And thereupon it was enacted with a full conſent of the three Eſtates, That ſuch as ſhould purchaſe in the Court of *Rome*, or elſewhere, any *Bulls* or *Proceſſes*, or other things which might touch the King in his Crown and dignity Royal, and ſuch as ſhould bring them into the Realm, and ſuch as ſhould receive them, publiſh them, or execute them, they, their Notaries, Proctors, Maintainors and Counſellours, ſhould be all out of the King's protection, their lands and goods forfeited to the King, their bodies attached if they might be found, or elſe proceſſe of *Præmunire facias* to be awarded againſt them. Upon theſe motives, and with this affection and zeal of the people, was the Statute of 16 *Rich.*2. made, whereupon we have framed our Inditement.

Now let us look higher, and ſee whether the former Laws made by King *Edw.*1. and King *Edw.*3. againſt the Uſurpation of the Biſhop of *Rome* were not grounded upon the like cauſe and reaſon. The Statute of 38 *Edw.*3.*cap.*1. expreſſing the miſchiefs that did ariſe by *Breves of Citation*, which drew the bodies of the people, and by *Bulls* of *Proviſion* and *Reſervation* of Eccleſiaſtical Benefices, which drew the wealth of the Realm, to the Court of *Rome*, doth declare, That by theſe means the ancient Laws, Cuſtomes and Franchiſes of the Realm were confounded, the Crown of our Sovereign Lord the King diminiſhed, and his Perſon falſely defamed, the Treaſure and riches of the land carried away, the Subjects of the Realm moleſted and impoveriſhed, the Benefices of holy Church waſted and deſtroyed, Divine ſervice, Hoſpitality, Almsdeeds and other works of Charity neglected.

The effect of the Statute of 38 *Edw.* 3. *cap.* 1.

Again,

The Statute of 27 Ed. 3. cap. 1.

Again, 27 *Edw.* 3. *cap.* 1. upon the grievous and clamorous complaint (for that phraſe is there uſed) of the Great men and Commons touching *Citations* and *Proviſions*, it is enacted; That the offenders ſhall forfeit their lands, goods and chattells, and their bodies be impriſoned and ranſomed at the King's will.

The Statute of 25 Edw. 3. reciting the Statute of 25 Ed. 1.

But in the Stat. of 25 *Edw.* 3. wherein the firſt Law againſt *Proviſors* made 25 *Edw.* 1. is recited, there is a larger declaration of theſe inconveniences then in the two laſt Acts before mentioned. For there all the Commons of the Realm do grievouſly complain, That whereas the Holy Church of *England* was firſt founded in eſtate of Prelacy by the Kings and Nobility of that Realm, and by them endowed with great poſſeſſions and revenews in lands, rents and Advowſons, to the end the people might be informed in Religion, Hoſpitality might be kept, and other works of Charity might be exerciſed within the Realm; And whereas the King and other founders of the ſaid Prelacies were the rightful Patrons and Advowees thereof, and upon avoidance of ſuch Eccleſiaſtical promotions had power to advance thereunto their kinſmen, friends, and other learned men of the birth of that Realm, which being ſo advanced became able and worthy perſons to ſerve the King in Counſel, and other places in the Commonweal: The Biſhop of *Rome*, uſurping the Seigniory of ſuch poſſeſſions and Benefices, did give and grant the ſame to *Aliens*, which did never dwell in *England*, and to *Cardinals*, which might not dwell there, as if he were rightful Patron of thoſe Benefices; whereas by the Law of *England* he never had right to the Patronage thereof; whereby in ſhort time all the Spiritual promotions in the Realm would be engroſſed into the hands of Strangers, Canonical elections of Prelats would be aboliſhed, works of Charity would ceaſe, the founders and true Patrons of Churches would be diſinherited, the King's Counſel would be weakened, the whole kingdome impoveriſhed, and the Laws and rights of the Realm deſtroyed. Upon this complaint it was reſolved in Parliament, That theſe oppreſſions and grievances ſhould not be ſuffered in any manner: and therefore it was enacted, That the King and his Subjects ſhould thenceforth enjoy the rights of Patronage; That free Elections of Archbiſhops, Biſhops, and other Prelates elective, ſhould be made according to the ancient grants of the King's

King's Progenitors and their founders; That no *Bulls* of *Proviſion* ſhould be put in execution, but that the *Proviſors* ſhould be attached, fined, and ranſomed at the King's will, and withall impriſoned till they had renounced the benefits of their *Bulls*, ſatisfied the partie grieved, and given ſureties not to commit the like offence again.

Now, Maſter *Lalor*, what think you of theſe things? Did you believe that ſuch Laws as theſe had been made againſt the Pope 200, 250, 300 years ſince? Was King *Hen.* 8. the firſt Prince that oppoſed the Pope's uſurped Authority? Were our Proteſtants the firſt Subjects that ever complained of the Court of *Rome*? Of what Religion, think you, were the propounders and enacters of theſe Laws? Were they good Catholicks? or good Subjects? or what were they? You will not ſay they were Proteſtants, for you will not admit the Reformed Religion to be ſo ancient as thoſe times: neither can you ſay they were undutifull, for they ſtrove to uphold their liege Lord's Sovereignty. Doubtleſſe the people in thoſe days did generally embrace the vulgar errours and ſuperſtitions of the *Romiſh* Church, and in that reſpect were Papiſts as well as you: but they had not learned the new doctrine of the Pope's Supremacie, and tranſcendent authority over Kings; they did not believe he had power to depoſe Princes, and diſcharge Subjects of their allegeance, to abrogate the fundamentall Laws of kingdomes, and to impoſe his Canons as binding laws upon all nations, without their conſents: they thought it a good point of Religion to be good Subjects, to honour their King, to love their country, and to maintain the laws and liberties thereof, howſoever in other points they did erre and were miſs-led with the Church of *Rome*.

Theſe Laws made by ſuch as did profeſſe the Romiſh Religion

So as now (Maſter *Lalor*) you have no excuſe, no evaſion, but your conſcience muſt condemn you as well as the Law; ſince the Law-makers in all Ages, and all religious Papiſts and Proteſtants, do condemn you: unleſſe you think your ſelf wiſer then all the Biſhops that were then in *England*, or all the Judges, who in thoſe days were learned in the Civil and Canon Laws as well as in the Common Laws of *England*. But you, being an *Iriſh*-man, will ſay, perhaps, theſe Laws were made in *England*, and that the *Iriſh* Nation gave no particular conſent thereunto, onely there was an implicite conſent wrapt and

Laws againſt Proviſors made in Ireland.

and folded up in generall terms given in the Statute of 10 *Henr.*7.*cap.*22. whereby all Statutes made in *England* are eſtabliſhed and made of force in *Ireland.* Aſſuredly, though the firſt Parliament held in *Ireland* was after the firſt Law againſt *Proviſors* made in *England*, yet have there been as many particular Laws made in *Ireland* againſt *Proviſions*, *Citations*, *Bulls* and *Breves* of the Court of *Rome*, as are to be found in all the Parliament-Rolls in *England*. What will you ſay if in the ſelfſame Parliament of 10 *Henr.*7.*cap.*5. a ſpecial Law were made, enacting, authorizing and confirming in this Realm all the Statutes of *England* made againſt *Proviſors*? if before this the like Law were made 32 *Henr.* 6.*cap.* 4. and again 28 *Henr.* 6. *cap.*30. the like? and before that, the like Law were made 40 *Edw.* 3.*cap.*13. in the famous Parliament of *Kilkenny*? if a Statute of the ſame nature were made 7 *Edw.*4.*cap.*2. and a ſeverer Law then all theſe 16 *Edw.*4.*cap.*4. That ſuch as purchaſe any *Bulls* of *Proviſion* in the Court of *Rome*, as ſoon as they have publiſhed or executed the ſame to the hurt of any Incumbent, ſhould be adjudged traitors? Which Act, if it be not repealed by the Statute of Queen *Mary*, may terrifie Maſter *Lalor* more then all the Acts which are before remembred.

When the Pope began firſt to uſurp upon the liberties of the Crown of England.

But let us aſcend yet higher, to ſee when the Pope's Uſurpation, which cauſed all theſe complaints, began in *England*, with what ſucceſſe it was continued, and by what degrees it roſe to that height, that it well-nigh over-topp'd the Crown: whereby it will appear whether he had gained a circle by preſcription, by a long and quiet poſſeſſion, before the making of theſe Laws.

A compariſon of the ſpirituall Monarchy of the Church with the temporall Monarchies of the world.

The firſt encroachment of the Biſhop of *Rome* upon the liberties of the Crown of *England* was made in the time of King *William* the *Conqueror*. For before that time the Pope's Writ did not run in *England*, his *Buls* of *Excommunication* and *Proviſion* came not thither; no *Citation*, no *Appeals* were made from thence to the Court of *Rome*; our Archbiſhops did not purchaſe their Palls there, neither had the Pope the *Inveſtiture* of any of our Biſhopricks. For it is to be obſerved, that as under the Temporal Monarchie of *Rome Britany* was one of the laſt Provinces that was wone, and one of the firſt that was loſt again: ſo under the Spiritual Monarchy of the Pope of *Rome England*

land was one of the laſt countries of Chriſtendom that received his yoke, and was again one of the firſt that did reject and caſt it off. And truly, as in this, ſo in divers other points, the courſe of this Spiritual Monarchy of the Pope may be aptly compared with the courſe of the Temporal Monarchies of the world. For as the Temporal Monarchies were firſt raiſed by intruſion upon other Princes and Commonweals; ſo did this Spiritual Prince (as they now ſtyle him) grow to his greatneſs by uſurping upon other States and Churches. As the Temporal Monarchies, following the courſe of the Sun, did riſe in the Eaſt, and ſettle in the Weſt; ſo did the Hierarchy or Government of the Church. Of the four Temporal Monarchies the firſt two were in *Aſia*, the latter two in *Europe*; but the *Roman* Monarchy did ſurpaſs and ſuppreſs them all: So were there four great Patriarchs, or Eccleſiaſtical Hierarchies, two in the Eaſt, and two in the Weſt; but the *Roman* Patriarch exalted himſelf, and uſurped a Supremacy above them all. And as the riſing of the *Roman* Empire was moſt oppoſed by the ſtate of *Carthage* in *Africa*, (*æmula Romæ Carthago*;) ſo the Council of *Carthage* and the *African* Biſhops did firſt forbid Appeals to *Rome*, and oppoſed the Supremacy of the Pope. And doth not *Daniel's* Image, whoſe head was of gold, and legs and feet of iron and clay, repreſent this Spiritual Monarchy as well as the Temporal, whereas the firſt Biſhops of *Rome* were golden Prieſts, though they had but wooden Chalices, and that the Popes of later times have been for the moſt part worldly and earthly-minded? And as the Northern Nations firſt revolted from the *Roman* Monarchy, and at laſt brake it in pieces; have not the North and North-weſt Nations firſt fallen away from the Papacy? and are they not like in the end to bring it to ruine?

The Pope had no juriſdiction in England in the time of the Britans.

But to return to our purpoſe: The Biſhop of *Rome* before the firſt *Norman* Conqueſt had no juriſdiction in the Realm of *England*, neither in the time of the *Britans*, nor in the time of the *Saxons*. *Eleutherius* the Pope within leſs then 200 years after *Chriſt* writes to *Lucius* the *Britiſh* King, and calls him *God's Vicar* within his Kingdom: which title he would not have given to that King, if himſelf, under pretence of being *God's Vicar-general* in earth, had claimed juriſdiction over all Chriſtian kingdomes.

Pelagius the Monk of *Bangor*, about the year 400. being cited to *Rome*, refuſed to appear upon the Pope's citation, affirming that *Britain* was neither within his Dioceſe nor his Province.

After that, about the year 600, *Auguſtine* the Monk was ſent by *Gregory* the Great into *England*, to convert the *Saxons* to Chriſtian Religion: the *Britiſh* Biſhops then remaining in *Wales* regarded not his Commiſſion nor his Doctrine, as not owing any duty, nor having any dependency on the Court of *Rome*, but ſtill retained their ceremonies and traditions which they received from the Eaſt Church upon the firſt plantation of the faith in that Iſland, being divers and contrary to thoſe of the Church of *Rome*, which *Auguſtine* did endeavour to impoſe upon them.

The like doth *Beda* write of the *Iriſh* Prieſts and Biſhops. For in the year 660. he reporteth, that a Convocation of the Clergy being called by King *Oſwif*, there roſe a diſputation between *Colman*, one of our *Iriſh* Saints, then preſent in that Synod, and *Wilfrid* a *Saxon* Prieſt, touching the obſervation of *Eaſter*, wherein the *Britiſh* and *Iriſh* Churches did then differ from the Church of *Rome*. *Colman*, for the celebration of *Eaſter* uſed in *Ireland*, affirmed it was the ſame *quod beatus Evangeliſta Johannes, diſcipulus ſpecialiter à Domino dilectus, in omnibus quibus præerat Eccleſiis celebrâſſe legitur.* On the other part *Wilfrid* alledged, that all the Churches of Chriſtendom did then celebrate *Eaſter* after the *Roman* manner, except the Churches of the *Britans* and *Picts*, *qui contra totum orbem* (ſaid he) *ſtulto labore pugnant.* Whereunto *Colman* replied, *Miror quare ſtultum laborem appellas, in quo tanti Apoſtoli qui ſuper pectus Domini recumbere dignus fuit exempla ſectamur. Numquid reverendiſſimum patrem noſtrum Columbam & ejus ſucceſſores, viros à Deo dilectos, divinis paginis contraria ſapuiſſe aut egiſſe credendum eſt?* In this diſputation or dialogue two things may be obſerved: firſt, that at this time the authority of the Biſhop of *Rome* was of no eſtimation in theſe Iſlands: next, that the Primitive Churches of *Britany* and *Ireland* were inſtituted according to the form & diſcipline of the Eaſt Churches, and not of the Weſt, and planted by the Diſciples of *John*, and not of *Peter*. Thus much for the time of the *Britans*. For the *Saxons*, though King *Ina* gave the *Peter-pence* to the Pope, partly as Alms, and partly in recompence of a houſe erected in *Rome* for entertainment of *Engliſh* Pilgrims;

Pilgrims; yet it is certain that *Alfred* and *Athelſtane*, *Edgar* and *Edmund*, *Canutus* and *Edward* the *Confeſſor*, and divers other Kings of the *Saxon* race, did give all the Biſhopricks in *England per annulum & baculum*, without any other ceremony, as the Emperour and the *French* King and other Chriſtian Princes were wont to doe. They made alſo ſeveral laws for the government of the Church: Among others Saint *Edward* begins his laws with this proteſtation, that it is his Princely charge, *ut populum Domini, & ſuper omnia ſanctam Eccleſiam, regat & gubernet.* And King *Edgar*, in his Oration to his *Engliſh* Clergy, *Ego* (ſaith he) *Conſtantini, vos Petri gladium habetis: jungamus dextras, & gladium gladio copulemus, ut ejiciantur extra caſtra leproſi, & purgetur ſanctuarium Domini.* So as the Kings of *England* with their own Clergy did govern the Church, and therein ſought no aid of the Court of *Rome*. And the troth is, that though the Pope had then long hands, yet he did not extend them ſo far as *England*, becauſe they were full of buſineſs nearer home in drawing the Emperour and the *French* King under his yoke. But upon the Conqueſt made by the *Norman*, he apprehended the firſt occaſion to uſurp upon the liberties of the Crown of *England*. For the *Conquerour* came in with the Pope's Banner, and under it wone the battel which got him the garland: and therefore the Pope preſumed he might boldly pluck ſome flowers from it, being partly gained by his countenance and bleſſing. Hereupon he ſent two Legates into *England*, which were admitted and received by the *Conquerour*. With them he called a Synod of the Clergy, and depoſed old *Stigand* Archbiſhop of *Canterbury*, becauſe he had not purchaſed his Pall in the Court of *Rome*; he diſplaced many Biſhops and Abbots, to place his *Normans* in their rooms. And amongſt the reſt it is to be noted, that the King having earneſtly moved *Wolſtan* Biſhop of *Worceſter*, being then very aged, to give up his Staffe, his anſwer was, that he would give up his Staffe onely to him of whom he firſt received the ſame. And ſo the old man went to Saint *Edward's Tombe*, and there offered up his Staffe and Ring, with theſe words, *Of thee, O holy Edward, I received my Staffe and my Ring, and to thee I do now ſurrender the ſame again.* Which proves, that before the *Norman* Conqueſt the King did inveſt his Biſhops *per annulum & baculum*, as I ſaid before.

The firſt uſurpation of the Pope upon the Crown began in the time of King William the Conquerour.

By ſending Legates into England.

Thus we ſee, by the admiſſion of the Pope's Legates, the firſt ſtep or entry made into his uſurped juriſdiction in *England*. Albeit the King ſtill retained the abſolute power of inveſting Biſhops, and ſeemed onely to uſe the advice and aſſiſtance of the Legates in Eccleſiaſtical matters; for that no decree paſſed or was put in execution without his Royal aſſent thereunto. Beſides, how far forth he ſubmitted himſelf to the Pope, it appeareth by a ſhort Epiſtle he wrote to *Gregory* the 7. in this form. *Excellentiſſimo Sanctæ Eccleſiæ Paſtori, Gregorio, gratiâ Dei Anglorum Rex & Dux Normannorum Willielmus Salutem cum amicitia. Hubertus Legatus tuus, Religioſe Pater, ad me veniens ex tua parte me admonuit, ut tibi & ſucceſſoribus tuis fidelitatem facerem, & de pecunia quam Anteceſſores mei ad Romanam Eccleſiam mittere ſolebant melius cogitarem. Unum admiſi, alterum non admiſi: fidelitatem facere nolui, nec volo, quia nec ego promiſi nec Anteceſſores meos Anteceſſoribus tuis id feciſſe comperio. Pecunia tribus ferè annis, in Galliis me agente, negligenter collecta eſt: nunc vero divinâ miſericordiâ me in Regnum meum reverſo, quod collectum eſt per præfatum Legatum mittetur; & quod reliquum eſt, per Legatos Lanfranci Archiepiſcopi fidelis noſtri, cum opportunum fuerit, tranſmittetur, &c.*

In the time of Wil. Rufus the Pope attempted to draw Appeals to Rome, but prevailed not.

But in the time of his next Succeſſour, King *William Rufus*, they attempted to paſs one degree farther, that is, to draw *Appeals* to the Court of *Rome*. For *Anſelme* being made Archbiſhop of *Canterbury*, and being at ſome difference with the King, beſought his leave to goe to *Rome*, under pretence of fetching his Pall. The King, knowing he would appeal to the Pope, denied him leave to goe, and withall told him, That none of his Biſhops ought to be ſubject to the Pope, but the Pope himſelf ought to be ſubject to the Emperour; and that the King of *England* had the ſame abſolute liberties in his Dominions as the Emperour had in the Empire; and that it was an ancient cuſtome and law in *England*, uſed time out of mind before the Conqueſt, that none might appeal to the Pope without the King's leave; and that he that breaketh this law or cuſtome doth violate the Crown and dignity Royal, and he that violates my Crown (ſaith he) is mine enemy, and a traitour. How anſwer you this, quoth the King? Chriſt himſelf anſwers you, ſaith the Archbiſhop, *Tu es Petrus, & ſuper hanc Petram, &c.* Wherewith the King was nothing ſatisfied.

And

And thereupon *Anſelme* departing out of the Realm without licence, the King ſeized his Temporalties, and became ſo exaſperate and implacable towards the Biſhop, as he kept him in perpetual exile during his Reign, albeit great interceſſion were made for his return, as well by the Pope as the King of *France*.

In the time of K. Henry the firſt the Pope uſurpeth the donation of Biſhopricks, &c.

In the time of the next King, *Henr.* 1. though he were a learned and a prudent Prince, yet they ſought to gain a farther point upon him, and to pluck a flower from his Crown of greater value, namely the Patronage and Donation of Biſhopricks, and all other Benefices Eccleſiaſtical. For *Anſelme* being revok'd and re-eſtabliſhed in the See of *Canterbury*, the Biſhopricks of *Saliſbury* and *Hereford* fell void, which the King beſtowed on two of his Chaplains. But *Anſelme* their Metropolitan did refuſe to conſecrate them, ſo as the Archbiſhop of *York* was fain to perform that Office, who with the chief of the *Engliſh* Clergy ſtood with the King, and withſtood *Anſelme*. Hereupon the King requires him to doe his Homage: the Biſhop denies it. The King demands of him whether the patronage and inveſtiture of all Biſhopricks were not his rightful inheritance: the Biſhop ſaid it was not his right, becauſe Pope *Urban* had lately made a decree that no lay perſon ſhould give any Eccleſiaſtical Benefice. This was the firſt queſtion that ever was made touching the King of *England*'s right of patronage and donation of Biſhopricks within his dominions. This new queſtion cauſed many meſſages and embaſſages to *Rome*. At laſt the King writes plainly to the Pope, ***Notum habeat Sanctitas veſtra, quod me vivente (Deo auxiliante) dignitates & uſus regni noſtri non minuentur, & ſi ego (quod abſit) in tanta me directione ponerem, magnates mei, imo totius Angliæ populus id nullo modo pateretur.*** Beſides, *William de Warrenaſt*, the King's procurator in the Court of *Rome*, told the Pope that the King would rather loſe his kingdome then he would loſe the donation of Biſhopricks. The Pope anſwered, Know you preciſely, Sir, I ſpeak it before God, that for the redemption of my head I would not ſuffer him to enjoy it.

Hiſtor. Jornalenſis M.S. in Archiv. Rob. Cotton Eq. Aur.

After this *Anſelme* being received into the King's favour, in a Synod of the *Engliſh* Clergy holden at *London* in the year 1107. a Decree was made, *Cui annuit Rex Henricus*, ſaith *Matth. Paris*, that from thenceforth, *nunquam per donationem Baculi Paſtoralis*

Paſtoralis vel Annuli quiſquam de Epiſcopatu vel Abbathia per Regem, vel quamlibet laicam manum, inveſtiretur in Anglia. In recompence whereof the Pope yielded this favour to the King, that thenceforth no Legate ſhould be ſent from the Pope's ſide into *England*, unleſs the King required it; and that the Archbiſhop of *Canterbury* for the time being ſhould be for ever *Legatus natus:* and *Anſelm*, for the honour of his See, obtained, that the Archbiſhop of *Canterbury* ſhould in all general Councils ſit at the Pope's foot *tanquam alterius orbis Papa.* Notwithſtanding as the ſucceeding Popes kept not their promiſe touching the ſending of Legates, ſo this ſelf-ſame King, after the death of *Anſelm*, broke the Decree touching the inveſtiture of the Biſhops. For he gave the Archbiſhoprick of *Canterbury* to *Rodolph* Biſhop of *London*, ſaith *Matth. Paris*, *Et illum per Annulum & Paſtoralem Baculum inveſtivit*; as before he had inveſted *Willielmum Gifford* in the Biſhoprick of *Wincheſter, contra novi Concilii ſtatuta*, as the ſame Authour reporteth.

In the time of King Stephen the Pope gained Appeals to the Court of Rome.

The times of the next ſucceeding King *Stephen* were full of Civil diſſenſions, which made the Land well-nigh waſte, ſo as Saint *Peter*'s Succeſſour could not take any fiſh in ſuch troubled waters. Yet during this King's reign they wone that point of juriſdiction which they attempted to get, but failed thereof, in the time of King *William Rufus*; namely, that Appeals might be made to the Court of *Rome*. For in a Synod at *London* ſummoned by *Henr.* Biſhop of *Wincheſter*, the Pope's Legate, it was decreed, That Appeals ſhould be made from Provincial Councils to the Pope. Before that time *Appellationes in uſu non erant*, ſaith a Monk of that time, *donec Henricus Winton. Epiſcopus malo ſuo, dum Legatus eſſet, crudeliter introduxit.* Thus did the Pope uſurp three main points of juriſdiction upon three ſeveral Kings after the Conqueſt, (for of *William Rufus* he could win nothing:) namely, upon the *Conquerour*, the ſending of Legates or Commiſſioners to hear and determine Eccleſiaſtical cauſes; upon *Henr.* 1. the Donation and Inveſtitures of Biſhopricks and other Benefices; upon King *Stephen*, the Appeals to the Court of *Rome.*

** In the time of K. Henry 2. the Pope claimed exemption of Clerks from the Secular power.*

* Now are we come to King *Henr.* 2. in whoſe time they made a farther encroachment upon the Crown, whereby they endeavoured to make him but half a King, and to take away half

half his Subjects, by exempting all Clerks from Secular power. Hereupon roſe that long and great contention between King *Henr.* 2. and *Thomas Becket*, which on *Becket's* behalf may be rightly termed rebellion and treaſon: the juſt cauſe and ground whereof was the ſame that made the late difference between the Pope and the *Venetians*. For a Prieſt had committed a foul murther, and being thereof indicted and convicted, prayed the benefit of his Clergy; which being allowed unto him, he was delivered to the Biſhop of *Salisbury*, being his Ordinary, to make his purgation: which the murtherer failing to doe, ſhould by the Law have been degraded, and delivered back to the Secular power. But the Biſhop, contemning the Law of the land, to enlarge the Liberties of the Church, ſent his priſoner to *Thomas Becket* then Archbiſhop of *Canterbury*, who ſhifted him into an Abbey, and ſo reſcued him from the capital puniſhment he had juſtly deſerved.

A brief of Tho. Becket's troubles, or rather treaſons.

This gap of impunity being once opened, the Clergie grew ſo outrageous, as the King was informed of a hundred murthers committed by Clerks, and yet not one of them executed for the ſame; for that the Archbiſhop had protected them all after the ſame manner. For this the King was juſtly incenſed againſt the Archbiſhop, who juſtified his doing herein. Whereupon a common Counſel as well of the Biſhops as of the Nobility was called, wherein they did revive and re-eſtabliſh the ancient laws and cuſtomes of the Kingdome for the government of the Clergy, and ordering of cauſes Eccleſiaſtical, whereof theſe were the principal Heads or Articles.

The Conſtitutions of Claringdon.

1. That no Biſhop nor Clerk ſhould depart the Realm without the King's licence; and that ſuch as obtained licence ſhould give ſureties that they ſhould procure no hurt or damage to the King or Realm during their abſence in forrein parts.

2. That all Biſhopricks and Abbeys being void ſhould remain in the King's hands as his own demeſnes, until he had choſen and appointed a Prelate thereunto; and that every ſuch Prelate ſhould doe his homage to the King before he were admitted unto the place.

3. That Appeals ſhould be made in cauſes Eccleſiaſtical in this manner: from the Archdeacon to the Ordinary, from the Ordi-

the Ordinary to the Metropolitane, from the Metropolitane to the King, and no farther.

4. That *Peter-pence* ſhould be paid no more to the Pope, but to the King.

5. That if any Clerk ſhould commit Felony, he ſhould be hanged; if Treaſon, he ſhould be drawn and quartered.

6. That it ſhould be adjudged high Treaſon to bring in *Bulls* of *Excommunication* whereby the Realm ſhould be curſed.

7. That no Decree ſhould be brought from the Pope to be executed in *England*, upon pain of impriſonment and confiſcation of goods.

To theſe and other Conſtitutions of the like nature made at *Claringdon* all the reſt of the Biſhops and Great men did ſubſcribe, and bound themſelves by oath to obſerve the ſame abſolutely; onely the Archbiſhop would not ſubſcribe, and ſwear, but with a *Saving, ſalvo ſuo ordine & honore Sanctæ Eccleſiæ:* yet at laſt he was content to make the like abſolute ſubſcription and Oath as the reſt had done, but preſently he repented; and to ſhew his repentance ſuſpended himſelf from celebrating Maſs, till he had received abſolution from the Pope. Then he began to maintain and juſtifie the exemption of Clerks again; whereat the King's diſpleaſure was kindled anew: and then the Archbiſhop once again promiſed abſolute obedience to the King's Laws. (See the fickleneſs & mutability of your conſtant Martyr.) The King, to bind faſt this ſlippery *Proteus*, called a Parliament of the Biſhops and Barons, and ſending for the Roll of thoſe Laws, required all the Biſhops to ſet their Seals thereunto. They all aſſented but the Archbp, who proteſted he would not ſet his Seal, nor give allowance to thoſe Laws. The King being highly offended with his rebellious demeanour, required the Barons in Parliam. to give Judgment of him, who being his ſubject would not be ruled by his Laws: *Citò facite mihi juſtitiam de illo, qui homo meus ligeus eſt, & ſtare Juri in Curia mea recuſat.* Whereupon the Barons proceeding againſt him, & being ready to condemn him; I prohibit you (quoth the Archbp) in the name of Almighty God to proceed againſt me, for I have appealed to the Pope; and ſo departed in contempt of that high Court, *Omnibus clamantib⁹*, ſaith *Hovenden, quo progrederis proditor? exſpecta & audi judicium tuum.* After this he lurked ſecretly near the Sea-ſhore, and changing his apparel and name (like a Jeſuit

Jeſuit of theſe times,) he took ſhipping with a purpoſe to fly to *Rome*: but his paſſage being hindered by contrary winds, he was ſummoned to a Parliament at *Northampton*, where he made default wilfully; for which contempt, his Temporalties were ſeized, and his body being attach'd, he was charged with ſo great an account to the King, as that he was found in arrear thirty thouſand marks, and committed to priſon; whence he found means to eſcape ſhortly after, and to paſs out of the Realm to *Rome*. He was no ſooner gone, but the King ſends writs to all the Sheriffs in *England* to attach the bodies of all ſuch as made any Appeals to the Court of *Rome*. Hereupon many meſſages and letters paſſing to and fro, all the Suffragans of *Canterbury* joyn in a letter to the Pope, wherein they condemn the fugitive Archbiſhop, and juſtifie the King's proceedings. Upon this the Pope ſends two Legates to the King being then in *Normandy*, to mediate for the Archbiſhop. They, with the mediation of the *French* King, prevailed ſo far with King *Henry*, as that he was pleaſed to accept his ſubmiſſion once again, and promiſed the King of *France*, that if he would be obedient to his Laws, he ſhould enjoy as ample liberties as any Archbiſhop of *Canterbury* ever had: and ſo ſent him into *England* with recommendation unto the young King his Son, then lately crowned; who, hearing of his coming, commanded him to forbear to come to his preſence, untill he had abſolved the Archbp of *York* and others whom he had excommunicated for performing their duties at his Coronation. The Archbp returned anſwer, that they had done him wrong in uſurping his office; yet if they would take a ſolemn oath to become obedient to the Pope's commandment in all things concerning the Church, he would abſolve them. The Biſhops underſtanding this, proteſted they would never take that oath unleſs the King willed them ſo to doe. K. *Hen.* the Father being hereof advertiſed into *France*, did riſe into great paſſion & choler, and in the hearing of ſome of his ſervants uttered words to this effect; *Will no man revenge me of mine enemies?* Whereupon the 4 Gentlemen named in the Stories of that time paſſed into *England*, and firſt moving the Archbp to abſolve the Biſhops whom he had excommunicated for performing their duties at the young King's Coronation, and receiving a peremptory anſwer of denial from the Archbiſhop, they laid violent hands upon him, and ſlew him: for

Four points of juriſdiction uſurped upon the crown of England by the Pope before the reign of K. John.

which the King was fain not onely to ſuffer corporal penance, but in token of his humiliation to kiſs the knee of the Pope's Legate. And this is the abridgment of *Becket's* Troubles, or rather Treaſons, for which he was celebrated for ſo famous a Martyr. And thus you ſee by what degrees the Court of *Rome* did within the ſpace of one hundred and odde years uſurp upon the Crown of *England* four points of juriſdiction. *Viz.* Firſt, ſending out of Legates into *England*. Secondly, drawing of Appeals to the Court of *Rome*. Thirdly, donation of Biſhopricks and other Eccleſiaſtical Benefices. And fourthly, exemption of Clerks from the Secular power. And you ſee withall how our Kings and Parliaments have from time to time oppoſed and withſtood this unjuſt Uſurpation.

Now then the Biſhop of *Rome* having claimed and wel-nigh recovered full and ſole juriſdiction in all cauſes Eccleſiaſtical, and over all perſons Eccleſiaſtical, with power to diſpoſe of all Eccleſiaſtical Benefices in *England*, whereby he had upon the matter made an abſolute conqueſt of more then half the Kingdome, (for every one that could read the Pſalm of *Miſerere* was a Clerk, and the Clergy poſſeſſed the moiety of all temporal poſſeſſions) there remained now nothing to make him owner and proprietor of all, but to get a ſurrender of the Crown, and to make the King his Farmer, and the people his Villains, which he fully accompliſhed and brought to paſs in the times of King *John* and of *Henr.*3.

The cauſe of the quarrell between K. John & the Pope.

The quarrel between the Pope and King *John*, which wreſted the Scepter out of his hand, and in the end brake his heart, began about the Election of the Archbiſhop of *Canterbury*. I call it Election, and not Donation or Inveſtiture: for the manner of inveſting of Biſhops by the Staff & Ring after the time of King *Henr.* 1. was not any more uſed, but by the King's licence they were Canonically elected, and being elected, the King gave his Royal aſſent to their election, and by reſtitution of their temporalties did fully inveſt them. And though this courſe of Election began to be in uſe in the time of *Rich.* 1. and *Hen.*2. yet I find it not confirmed by any Conſtitution or Charter before the time of King *John*, who by his Charter dated the fifteenth of *January*, in the ſixteenth year of his Reign, granted this privilege to the Church of *England* in theſe words, *viz.* *Quod qualiſcunque conſuetudo temporibus prædeceſſorum noſtrorum hactenus*

hactenus in Eccleſia Anglicana fuerit obſervata, & quicquid juris nobis hactenus vindicaverimus, de cætero in univerſis & ſingulis Eccleſiis & Monaſteriis, Cathedralibus & Conventualibus, totius regni Angliæ, liberæ ſint in perpetuum electiones quorumcumq; Prælatorum, majorum & minorum. Salvâ nobis & hæredibus noſtris cuſtodiâ Eccleſiarum & Monaſteriorum vacantium quæ ad nos pertinent. Promittimus etiam quod nec impediemus nec impediri permittemus per miniſtros noſtros, nec procurabimus, quin in univerſis & ſingulis Monaſteriis & Eccleſiis, poſtquam vacuerint prælaturæ, quemcumq; voluerint libere ſibi præficiant electores Paſtorum, petitâ tamen à nobis priùs & hæredibus noſtris licentiâ eligendi, quam non denegabimus nec differemus. Et ſimiliter, poſt celebratam electionem, noſter requiratur aſſenſus, quem non denegabimus, niſi adverſus eandem rationale propoſuerimus, & legitimè probaverimus propter quod non debemus conſentire, &c.

When Canonical election began firſt in England.

But to return to the cauſe of his great quarrel with the Pope. The See of *Canterbury* being void, the Monks of *Canterbury* ſuddenly and ſecretly without the King's licence elected one *Reignold* their Sub-prior to be Archbiſhop, who immediately poſted away to be confirmed by the Pope. But when he came there, the Pope rejected him, becauſe he came not recommended from the King. Hereupon the Monks made ſuit to the King to nominate ſome fit perſon to whoſe election they might proceed. The King commends *John Gray* Biſhop of *Norwich*, his principal Counſellour, who was afterward Lord Juſtice of this Kingdome, who with a full conſent was elected by them, and afterwards admitted and fully inveſted by the King. Theſe two Elections bred ſuch a controverſie as none might determine but the Pope, who gave a ſhort rule in the caſe, for he pronounced both elections void, and cauſed ſome of the Monks of *Canterbury*, who were then preſent in the Court of *Rome*, to proceed to the election of *Stephen Langton*, lately made Cardinal at the motion and ſuit of the *French* King: who being ſo elected was forthwith confirmed and conſecrated by the Pope, and recommended to the King of *England* with a flattering letter, and a preſent of four Rings ſet with precious ſtones, which were of great value and eſtimation in thoſe days. Howbeit the King more eſteeming this Jewel of the Crown, namely, the Patronage of Biſhopricks, returned a round and Kingly anſwer to the Pope, That inconſiderately

King John's round and Kingly letter to the Pope.

and raſhly he had caſſed and made void the election of the Biſhop of *Norwich*, and had cauſed one *Langton*, a man to him unknown, and bred up and nouriſhed amongſt his mortal enemies, to be conſecrated Archbiſhop, without any due form of election, and without his Royal aſſent, which was moſt of all requiſite by the ancient laws and cuſtomes of his Realm. That he marvelled much, that the Pope himſelf and the whole Court of *Rome* did not conſider what a precious account they ought to make of the King of *England*'s friendſhip, in regard that his one Kingdome did yield them more profit and revenue then all the other countries on this ſide the *Alpes*. To conclude, he would maintain the liberties of his Crown to the death, he would reſtrain all his ſubjects from going to *Rome*. And ſince the Archbiſhops, Biſhops and other Prelates within his dominions were as learned and religious as any other in Chriſtendome, his ſubjects ſhould be judged by them in Eccleſiaſtical matters, and ſhould not need to run out of their own countrey *to beg Juſtice at the hands of ſtrangers*.

The Pope curſeth the King, and interdicteth the Realm.

But what followed upon this? The Pope, after a ſharp reply, ſendeth forth a Bull of Malediction againſt the King, and of Interdiction againſt the Realm, whereby all the Churches in *England* were ſhut up, the Prieſts and Religious perſons were forbidden to uſe any Liturgies or Divine ſervice, to marry, to bury, or to perform any Chriſtian duty among the people. This put the King into ſuch a rage, that he on the other part ſeiſed the Temporalties of all Biſhops and Abbots, and confiſcated the goods of all the Clergy. Then doth the Pope by a ſolemn Sentence at *Rome* depoſe the King, and by a Bull ſent into *England* diſchargeth his ſubjects of their allegeance, and by a Legate ſent to the King of *France* gave the Kingdome of *England* to him and his ſucceſſours for ever.

Theſe things brought ſuch confuſion and miſery to all eſtates and degrees of people in *England*, as the King became odious to all his ſubjects, as well to the Laiety as to the Clergy. For as the Biſhops & religious people curſed him abroad, ſo the Barons took arms againſt him at home, till with much bloudſhed they forced him, by granting the *Great Charter*, to reſtore King *Edward*'s Laws, containing the ancient liberties of the ſubjects of *England*. The Pope being a ſpectator of this Tragedy,

gedy, and ſeeing the King in ſo weak and deſperate eſtate, ſent a Legate to comfort him, and to make a reaſonable motion unto him; to wit, that he ſhould ſurrender and give up his Crown and Kingdom to the Pope, which ſhould be regranted unto him again to hold in Fee-farm & Vaſſalage of the Church of *Rome*: And that thereupon the Pope would bleſs him and his Realm again, and curſe his rebells and enemies in ſuch ſort, as he ſhould be better eſtabliſht in his kingdome then he was before. In a word, this motion was preſently embraced by that miſerable King, ſo as with his own hands he gave up the Crown to the Pope's Legate, and by an Inſtrument or Charter ſealed with a Bull or Seal of gold he granted to God and the Church of *Rome*, the Apoſtles *Peter* and *Paul*, and to Pope *Innocent* the third and his ſucceſſours, the whole Kingdome of *England*, and the whole Kingdome of *Ireland*; and took back an eſtate thereof by an Inſtrument ſealed with Lead, yielding yearly to the Church of *Rome* over and above the *Peter pence* a thouſand marks ſterling, *viz.* ſeven hundred marks for *England*, and three hundred marks for *Ireland*, with a flattering Saving of all his Liberties and Royalties. The Pope had no ſooner gotten this Conveyance, though it were void in law, but he excommunicateth the Barons, and repeals the *great Charter*, affirming that it contained liberties too great for his ſubjects; calls the King his Vaſſal, and theſe Kingdomes *Saint Peter's Patrimony*; grants a general Bull of Proviſion for the beſtowing of all Eccleſiaſtical Benefices, and takes upon him to be abſolute and immediate Lord of all. And thus, under colour of exerciſing Juriſdiction within theſe Kingdomes, the Pope by degrees got the very Kingdomes themſelves. And ſo would he doe at this day, if the King would give way to his Juriſdiction.

But what uſe did the Pope make of this grant and ſurrender of the Crown unto him? what did he gain by it, if our Kings retained the profits of their Kingdomes to their own uſe? Indeed we do not find that the Fee-farm of a thouſand marks was ever pay'd, but that it is all run in arrear till this preſent day. For the troth is, the Court of *Rome* did ſcorn to accept ſo poor a revenue as a thouſand marks *per annum* out of two Kingdomes. But after the death of King *John*, during all the reign of *Henr.* 3. his ſon, the Pope did not claim a Seigniory or a Rent out of *England* and *Ireland*, but did endeavour to convert

convert all the profits of both Lands to his own uſe, as if he had been ſeized of all in demeſne. For whoſoever will reade *Matth. Paris* his ſtory of the time of King *Henr.* 3. will ſay theſe things ſpoken of before were but the *beginnings of evils.* For the exactions and oppreſſions of the Court of *Rome* were ſo continual and intolerable, as that poor Monk, who lived in thoſe times, though otherwiſe he adored the Pope, doth call *England Balaam's Aſſe* loaden, beaten, and enforced to ſpeak; doth call the Court of *Rome Charybdis* and *Barathrum avaritiæ*, the Pope's Collectors *Harpyes*, & the Pope himſelf a *Stepfather*, and the Church of *Rome* a *Stepmother*. He ſheweth that two third parts of the Land being then in the hands of Church-men, the entire profits thereof were exported to enrich the Pope & the Court of *Rome*: which was done for the moſt part by theſe two ways and means. Firſt, by conferring the beſt Eccleſiaſtical Benefices upon *Italians*, and other Strangers reſident in that Court, whoſe farmers and factors in *England* took the profits, turned them into money, and returned the money to *Rome*. Secondly, by impoſing continual taxes and tallages, (worſe then *Iriſh Cuttings*) being ſometimes the tenth, ſometimes the fifteenth, ſometimes the third, ſometimes the moiety of all the goods both of the Clergy and Laiety, under colour of maintaining the Pope's holy Wars againſt the Emperour and the *Greek* Church, who were then ſaid to be in rebellion againſt their Lady and Miſtreſs the Church of *Rome*. Beſides, for the ſpeedy levying and ſafe return of theſe moneys, the Pope had his *Lombards* and other *Italian* Bankers and Uſurers reſident in *London* and other parts of the Realm, who offered to lend and diſburſe the moneys taxed, and return the ſame by exchange to *Rome*, taking ſuch penal Bands, the form whereof is ſet down in *Matth. Paris*, and ſuch exceſſive Uſury, as the poor Religious houſes were fain to ſell their Chalices and Copes, and the reſt of the Clergy and Laiety had their backs bowed and their eſtates broken under the burthen. Beſides, the Pope took for perquiſites and caſualties the goods of all Clerks that died inteſtate, the goods of all Uſurers, and all goods given to charitable uſes. Moreover he had a ſwarm of Friers, (the firſt corrupters of Religion in *England*) who perſwaded the Nobility and Gentry to put on the ſign of the Croſs, and to vow themſelves to the Holy Wars; which they had no ſoo-

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ner done, but they were again perſwaded to receive diſpenſations of their vows, & to give mony for the ſame to the Church of *Rome*. I omit divers other policies then uſed by the Pope's Collectors to exhauſt the wealth of the Realm, which they affirmed they might take with as good a conſcience as the *Hebrews* took the Jewels of the *Ægyptians*. Briefly, whereas the King had ſcarce means to maintain his Royal family, they received out of *England* ſeventy thouſand pounds ſterling at leaſt yearly, which amounteth to two hundred and ten thouſand pounds ſterling of the moneys currant at this day. Beſides, they exported ſix thouſand marks out of *Ireland* at one time, which the Emperour *Frederick* intercepted. Laſtly, the King himſelf was ſo much dejected, as at a Royal Feaſt he placed the Pope's Legate in his own Chair of Eſtate, himſelf ſitting on his right hand, and the Biſhop of *York* on his left, *non ſine multorum obliquantibus oculis*, ſaith *Matth. Paris*.

Thus we ſee the effect of the Pope's pretended Juriſdiction within the dominions of the King of *England*. We ſee to what calamity and ſervitude it then reduced both the Prince and people. Was it not therefore high time to meet and oppoſe thoſe inconveniences? Aſſuredly if King *Edward* 1. who was the Son and heir of *Henr.* 3. had inherited the weakneſs of his Father, and had not reſiſted this Uſurpation and inſolency of the Court of *Rome*, the Pope had been proprietor of both theſe Iſlands, and there had been no King of *England* at this day.

King Edw. 1. oppoſeth the Pope's Uſurpation.

But King *Edward* 1. may well be ſtyled *vindex Anglicæ libertatis*, the *Moſes* that delivered his people from ſlavery and oppreſſion: and as he was a brave and victorious Prince, ſo was he the beſt *Pater patriæ* that ever reigned in *England* ſince the *Norman* Conqueſt, till the Coronation of our gracious Sovereign. At the time of the death of his Father he was abſent in the war of the Holy Land, being a principal Commander of the Chriſtian Army there, ſo as he returned not before the ſecond year of his reign. But he was no ſooner returned and crowned, but the firſt work he did was to ſhake off the yoke of the Biſhop of *Rome*. For the Pope having then ſummoned a general Council, before he would licence his Biſhops to repair to it, he took of them a ſolemn oath, that they ſhould not receive the Pope's bleſſing. Again, the Pope forbids the King to war

war againſt *Scotland*; the King regards not his prohibition: he demands the Firſt-fruits of Eccleſiaſtical Livings; the King forbids the payment thereof unto him. The Pope ſendeth forth a general Bull prohibiting the Clergy to pay ſubſidies or tributes to temporal Princes: a Tenth was granted to the King in Parliament, the Clergy refuſed to pay it: the King ſeizeth their Temporalties for their contempt, and got payment notwithſtanding the Pope's Bull. After this he made the Statute of *Mortmain*, whereby he brake the Pope's chief net, which within an Age or two more would have drawn to the Church all the Temporal poſſeſſions of the Kingdom, *&c.* Again, one of the King's ſubjects brought a Bull of Excommunication againſt another; the King commandeth he ſhould be executed as a Traitor, according to the ancient Law. But becauſe that Law had not of long time been put in execution, the Chancellor and Treaſurer kneeled before the King, and obtained grace for him, ſo as he was onely baniſhed out of the Realm. And as he judged it treaſon to bring in Bulls of Excommunication; ſo he held it a high contempt againſt the Crown to bring in Bulls of Proviſion or Briefs of Citation; and accordingly the Law was ſo declared in Parliament 25 *Edw.* 1. which was the firſt Statute made againſt *Proviſors*: the execution of which Law, during the life of King *Edw.* 1. did well-nigh aboliſh the uſurped Juriſdiction of the Court of *Rome*, and did revive and reſtore again the ancient and abſolute Sovereignty of the King and Crown of *England*.

E. 2. *ſuffereth the Pope to uſurp again.*

His Succeſſour, K. *Ed.* 2. being but a weak Prince, the Pope attempted to uſurp upon him again: but the Peers and people withſtood his Uſurpation. And when that unhappy King was to be depoſed, amongſt many Articles framed againſt him by his enemies, this was one of the moſt hainous, that he had given allowance to the Pope's Bulls.

Again, during the minority of King *Edw.* 3. and after that in the heat of the wars in *France*, the Pope ſent many Briefs and Bulls into *England*; and at laſt preſumed ſo far, as that he gave an *Italian* the title of a Cardinal in *England*, and withall by his Bull gave him power to beſtow all Eccleſiaſticall promotions as they ſhould fall void from time to time. This moved the King and the Nobility to write to the Pope to this effect: "We "and our anceſtours have richly endowed the Church of *England*,

"*land*, and have founded Abbeys and other Religious houſes "for the juriſdiction of our people, for maintenance of hoſpita- "lity, and for the advancement of our countrymen and kinſ- "men. Now you provide and place ſtrangers in our Benefices, "that come not to keep reſidence thereupon; and if they "come, underſtand not our language; and ſome of them are "ſubjects to our mortal enemies: by reaſon whereof our "people are not inſtructed, Hoſpitality is not kept, our Scho- "lars are unpreferred, and the Treaſure of the Realm is expor- "ted. The Pope returneth anſwer, That the Emperour had lately ſubmitted himſelf to the Church of *Rome* in all points, and was become the Pope's great friend; and in menacing manner adviſed the King of *England* to doe the like. The King replies, That if the Emperour and *French* King both ſhould take his part, he was ready to give battel to both in defence of the liberties of his Crown. Hereupon the ſeveral Statutes againſt *Proviſors* before recited were put in execution ſo ſeverely, as the King and his ſubjects enjoyed their right of Patronage clearly: and their exemption of Clerks took no place at all; for that the Abbot of *Waltham* and Biſhop of *Wincheſter* were both attainted of high contempts, and the Biſhop of *Ely* of a capital offence, as appeareth in the Records of this King's reign. Yet during the nonage of *Richard* 2. they began once again to encroach upon the Crown, by ſending Legates and Bulls and Briefs into *England*, whereof the people were ſo ſenſible and impatient, as that at their ſpecial prayer this Law of 16 *Rich.*2. (whereupon our Indictment is framed) was enacted, being more ſharp and penal then all the former Statutes againſt *Proviſors*. And yet againſt this King, as againſt *Edw.* 2. it was objected at the time of his Deprivation, that he had allowed the Pope's Bulls, to the enthralling of the Crown.

*E.*3. *reſiſteth the Uſurpation of the Pope.*

*King Rich.*2.

After this in the weak time of King *Henr.*6. they made one attempt more to revive their uſurped Juriſdiction by this policy. The Commons had denied the King a Subſidy when he ſtood in great want of moneys. The Archbiſhop of *Canterbury* & the reſt of the Biſhops offered the King a large ſupply of his wants if he would conſent that all the Laws againſt *Proviſors*, & ſpecially this Law of 16. *Rich.* 2. might be repealed. But *Humphrey* Duke of *Glouceſter*, who had lately before caſt the Pope's Bull into the fire, did likewiſe cauſe this motion to be rejected.

So as by ſpecial providence theſe Laws have ſtood in force even till this day in both theſe Kingdomes.

The Evidence againſt Lalor.

Then the Atturney general deſcended to the Evidence, whereby he proved fully all the parts of the Indictment. Firſt, it was proved by *Lalor*'s own Confeſſion, upon ſeveral Examinations taken before the Lord Deputy and Lord Chancellor and others, that he had accepted the Office and title of *Vicar-general* in the Dioceſes of *Dublin*, *Kildare* and *Fernes*, by virtue of the Pope's Bull. Secondly, it appeared by the copies of ſundry Letters found among his papers at his apprehenſion, that he ſtyled himſelf the Pope's Vicar, in this form, *Robertus Dublinien. & Kildaren. & Fernen. Diœceſ. Vicarius Apoſtolicus.* Thirdly, there were produced the copies of divers Acts and Inſtruments, written for the moſt part with *Lalor*'s own hand, ſome of Inſtitutions of Popiſh Prieſts to Benefices, others of Diſpenſations with Marriage within the degrees, others of Divorces, others of Diſpenſations for non-payment of Tithes. Whereby it was manifeſtly proved that he did execute the Pope's Bull, in uſurping and exerciſing Epiſcopal juriſdiction as *Vicar-general* of the See Apoſtolick within the Dioceſes before named.

To this evidence he made a three-fold anſwer. Firſt, That he was no ſuiter for the office of *Vicar-general*, but it was impoſed on him, and he accepted *virtute obedientiæ*, onely to obey his Superiors. Next, That he did exerciſe the office of *Vicar-general in foro conſcientiæ tantum*, and not *in foro judicii*. And laſtly, That thoſe copies of Inſtitutions, Diſpenſations and Divorces were many of them written with his man's hand, as precedents of ſuch Acts and Inſtruments, without his privity or direction. Hereupon Sir *James Ley* Chief Juſtice told him, that he could not well ſay that he accepted that unlawful office *virtute obedientiæ*, for there was no vertue in that obedience: That he ow'd an obedience to the Law, and to the King, who is the true Superiour and Sovereign over all his Subjects, and hath no Peer within his dominions; and that the Superiours whom he meant and intended were but Uſurpers upon the King's Juriſdiction, and therefore this excuſe did aggravate his contempt, in that it appeared he had vowed obedience to thoſe who were apparent enemies to the King and his Crown. And though it were manifeſt that he exerciſed juriſdiction *in foro judicii*, (for

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every Inſtitution is a Judgment, and ſo is every Sentence of divorce:) yet were his offence nothing diminiſhed if he had executed his office of *Vicar-general in foro conſcientiæ tantum*; for the court of man's Conſcience is the higheſt tribunal, & wherein the power of the Keys is exerciſed in the higheſt degree.

Hereunto the Atturney general took occaſion to adde thus much, That *Lalor* had committed theſe high offences, not onely againſt the Law, but againſt his own Conſcience, and that he was already condemned *in foro conſcientiæ*. For that he upon his ſecond Examination had voluntarily acknowledged himſelf not to be a lawful *Vicar-general*, and that he thought in his conſcience he could not lawfully take upon him the ſaid office. He hath alſo acknowledged our Sovereign Lord K. *James* to be his lawful, Chief and Supreme Governour, in all cauſes, as well Eccleſiaſtical as Civil; and that he is in conſcience bound to obey him in all the ſaid cauſes, *&c.* as it is contained in his Acknowledgement or Confeſſion before ſet down, which being ſhewed forth by the Atturney general, the Court cauſed it to be publickly read; and thereupon demanded of *Lalor*, if that were not his free and voluntary confeſſion ſigned with his own hand, and confirmed by his oath before the Lord Deputy and Council. He was not a little abaſhed at the publiſhing of this Acknowledgment & Confeſſion in the hearing of ſo many principal Gentlemen, to whom he had preached a contrary doctrine: therefore, ſaid he, the ſhewing forth of this Confeſſion is altogether impertinent and beſides the matter. Howſoever he could not deny but that he made it, and ſigned it, and ſwore it, as it was teſtified by the Lord Deputy and the reſt.

Lalor's Confeſſion publickly read.

Then was it demanded of him, whether ſince the making of this Confeſſion he had not proteſted to divers of his friends, that he had not acknowledged the King's Supremacy in *Eccleſiaſtical cauſes*. His anſwer was, That indeed he had ſaid to ſome of his friends who viſited him in the Caſtle of *Dublin*, that he had not confeſſed or acknowledged that the King was his Supreme Governour in *Spiritual cauſes*, for that the truth is, in the Confeſſion there is no mention made of *Spiritual cauſes*, but of *Eccleſiaſtical*.

This is a ſubtile evaſion indeed, ſaid the Atturney general: I pray you what difference do you make between *Eccleſiaſtical*

cauſes and *Spiritual cauſes?* This queſtion, ſaid *Lalor*, is ſudden and unexpected at this time, and therefore you ſhall doe well to take another day to diſpute this point. Nay, ſaid the Atturney general, we can never ſpeak of it in a better time or fitter place: and therefore though you, that bear ſo rev erend a title, and hold the reputation of ſo great a Clerk, require a farther time, yet ſhall you hear that we Lay-men that ſerve his Majeſty, and by the duty of our places are to maintain the juriſdiction of the Crown, are never ſo unprovided but that we can ſay ſomewhat touching the nature and difference of theſe cauſes.

When the diſtinction of Eccleſiaſtical and Spiritual cauſes from Civil and Temporal cauſes began in the world.

Firſt then, let us ſee when this diſtinction of *Eccleſiaſtical* or *Spiritual cauſes* from *Civil* and *Temporal cauſes* did firſt begin in point of juriſdiction. Aſſuredly for the ſpace of three hundred years after *Chriſt* this diſtinction was not known or heard of in the Chriſtian world. For the cauſes of *Teſtaments*, of *Matrimony*, of *Baſtardy* and *Adultery*, and the reſt which are called *Eccleſiaſtical* or *Spiritual cauſes*, were meerly *Civil*, and determined by the rules of the Civil Law, and ſubject onely to the juriſdiction of the Civil Magiſtrate, as all Civilians will teſtifie with me.

But after that the Emperours had received the Chriſtian Faith, out of a zeal and deſire they had to grace & honour the learned and godly Biſhops of that time, they were pleaſed to ſingle out certain ſpecial Cauſes wherein they granted juriſdiction unto the Biſhops: namely, in cauſes of *Tiths*, becauſe they were paid to men of the Church; in cauſes of *Matrimony*, becauſe Marriages were for the moſt part ſolemnized in the Church; in cauſes *Teſtamentary*, becauſe Teſtaments were many times made *in extremis*, when Church-men were preſent, giving ſpiritual comfort to the Teſtator, & therfore they were thought the fitteſt perſons to take the probates of ſuch Teſtaments. Howbeit theſe Biſhops did not proceed in theſe cauſes according to the Canons & Decrees of the Church, (for the Canon Law was not then hatched or dream'd of) but according to the rules of the Imperial Law, as the Civil Magiſtrate did proceed in other cauſes: neither did the Emperours, in giving this Juriſdiction unto them, give away their own Supreme and abſolute power, to correct and puniſh theſe Judges as well as others, if they performed not their ſeveral duties. This then is moſt certain, that

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the primitive Juriſdiction in all theſe cauſes was in the Civil Magiſtrate, and ſo in right it remains at this day; and though it be derived from him, it remaineth in him as in the fountain. For every Chriſtian Monarch (as well as the godly Kings of *Juda*) is *cuſtos utriuſque Tabulæ*; and conſequently hath power to puniſh not only Treaſon, Murther, Theft, and all manner of Force & Fraud, but Inceſt, Adultery, Uſury, Perjury, Simony, Sorcery, Idolatry, Blaſphemy. Neither are theſe Cauſes in reſpect of their own quality and nature to be diſtinguiſhed one from another by the names of *Spiritual* or *Temporal*: For why is *Adultery* a *Spiritual cauſe*, rather then *Murther*, when they are both offences alike againſt the Second Table? or *Idolatry* rather then *Perjury*, being both offences likewiſe againſt the Firſt Table? And indeed if we conſider the natures of theſe Cauſes, it will ſeem ſomewhat abſurd that they are diſtinguiſhed by the name of *Spiritual* & *Temporal*: for, to ſpeak properly, that which is oppoſed to *Spiritual* ſhould be termed *Carnal*; and that which is oppoſed to *Temporal* ſhould be called *Eternal*. And therefore if things were called by their proper names, *Adultery* ſhould not be called a *ſpiritual* offence, but a *carnal*. But ſhall I expreſs plainly and briefly why theſe Cauſes were firſt denominated, ſome *Spiritual* or *Eccleſiaſtical*, and others *Temporal* and *Civil*?

Truly they were ſo called, not from the nature of the Cauſes, as I ſaid before, but from the quality of the perſons whom the Prince had made Judges in thoſe Cauſes. The Clergy did ſtudy *ſpiritual* things, and did profeſs to live *ſecundùm ſpiritum*, and were called *ſpiritual men*; and therefore they called the Cauſes wherein Princes had given them juriſdiction *ſpiritual cauſes*, after their own name and quality. But becauſe the Laymagiſtrates were ſaid to intend the things of this world, which are *temporal* and tranſitory, the Clergy called them *ſecular* or *temporal* men, and the Cauſes wherein they were Judges *temporal cauſes*. This diſtinction began firſt in the Court of *Rome*, where the Clergy having by this Juriſdiction gotten great wealth, their wealth begot pride, their pride begot ingratitude towards Princes, who firſt gave them their Juriſdiction, and then, according to the nature of all ungrateful perſons, they went about to extinguiſh the memory of the benefit: for whereas their Juriſdiction was firſt derived from *Cæſar*, in the execution whereof they were *Cæſar's* Judges, ſo as both their Courts

and

and Cauſes ought ſtill to have born *Cæſar's image & ſuperſcription*, as belonging unto *Cæſar*; they blotted *Cæſar*'s name out of the ſtyle of their Courts, and called them *Courts Chriſtian*, as if the Courts holden by other Magiſtrates had been in compariſon but Courts of *Ethnicks*; and the Cauſes which in their nature were meerly *Civil*, they called *Spiritual* and *Eccleſiaſtical*. So as if the Emperour ſhould challenge his Courts and Cauſes again, and ſay, *Reddite Cæſari quæ ſunt Cæſaris*, they would all cry out on the contrary part and ſay, *Date Deo quæ ſunt Dei*; our Courts bear the name and title of *Chriſt*, the ſuperſcription of *Cæſar* is quite worn out, and not to be found upon them. And this point of their policy is worth the obſerving, that when they found their juriſdiction in Matrimonial cauſes to be the moſt ſweet and gainful of all other, (for of *Matrimony* they made *matter of money* indeed) to the end that *Cæſar* might never reſume ſo rich a perquiſite of their Spiritual juriſdiction, they reduced Matrimony into the number of the 7 *Sacraments*: after which time it had been Sacriledge, if the Civil Magiſtrate had intermeddled with the leaſt matter that had relation to Matrimony, or any dependency thereupon. So then it appeareth, that all Cauſes whereof Eccleſiaſtical or Spiritual perſons have cognizance or juriſdiction by the grants or permiſſion of Princes are called *Eccleſiaſtical* or *Spiritual cauſes*. And as all their Courts are called *Spiritual Courts*, ſo all Cauſes determinable in thoſe Courts are called *Spiritual cauſes*. And therefore where M. *Lalor* hath acknowledged the King's Majeſty to be Supreme Governour in all *Eccleſiaſtical cauſes*, he hath therein acknowledged the King's Supremacy in all *Spiritual cauſes*; wherein he hath but rendered to *Cæſar* that which is *Cæſar*'s, and hath given unto his Majeſty no more then all the Biſhops of *England* have yielded to his Predeceſſours, not onely in this latter Age, but alſo in former times both before and ſince the Conqueſt, as hath been before at large expreſſed.

Here the day being far ſpent, the Court demanded of the priſoner if he had any more to ſay for himſelf. His anſwer was, That he did willingly renounce his office of *Vicar-general*, and did humbly crave his Majeſtie's grace and pardon. And to that end, he deſired the Court to move the L. Deputy to be favourable unto him. Then the Jury departed from the Bar, and returning within half an hour, found the priſoner

guilty

guilty of the Contempts whereof he was indicted. Whereupon the Solicitor general moved the Court to proceed to Judgement. And Sir *Dominick Sarſfield*, Knight, one of the Juſtices of his Majeſtie's chief place, gave Judgement according to the form of the Statute whereupon the Indictment was framed.

FINIS.

UNE EXACT

TABLE

AL

REPORT

DE

Sir John Davys

CHIVALER,

Atturney General

DEL ROY EN *IRELAND.*

I do allow the Printing of this Table to Sir *John Davys* reports:

June 26. 1677. *FRA. NORTH.*

LONDON,

Printed for *James Collins*, and *Charles Harper*, in the Temple paſſage in Eſſex Garden, and the Flower de luce in *Fleetſtreet*. 1677.

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UNE
EXACT TABLE
AL REPORT
De Sir *JOHN DAVYS*
CHIVALER.

A

Abatement.

1 COuntee eſt parcel del noſme, & ne beſoin d'uſer auter ſurnoſme, & ſi ſoit omit en Brief, le *Brief* abatera. - 60.

2 Si un Countee ſoit fait Duke, pendant le Brief, ceo ne abatera le *Brief*. *ibid.*

Abeyance.

1 La ley abhorre Abeyance & ſuſpenſion de Franketenement, & pur ceo ſi leaſe pur ans ſoit fait, le Remainder al droit heirs de *J. S.* le limitation del Remainder eſt void. 34.

2 Iſſint ſi Tenant del *Roy* moruſt ſans heir, ou ſi Donee del Roy en tayle moruſt ſans Iſſue, la terre eſt en Poſſeſſion del *Roy* ſans Office. 34.

3 Iſſint terre ne poet eſtre *appendant* al Office pur vy, mes ſolement al Office de Inheritance. 34.

Adminiſtration. V. Ordinary.

Annuity.

1 Al aſſignment de ceo *Atturnement* n'eſt neceſſary. 5. b.

2 En Annuity la terre n'eſt charge, mes le Perſon en reſpect

ſpect de ceo, auterment eſt *Rent charge*. 5. b.

3 En *Brief d' Annuity* vers l' heir ou ſucceſſor n'eſt Plea que le *Pl.* ad enter en la terre diſcendue, coment que il ne ſerra charge s'il n' ad per diſcent. 5. b. 6.

4 Annuity *pro ſervitio impendendo* eſt determin per le *withdrawing* del ſervice. 1. b.

5 *Vid. Extinguiſhment Par.* 2. 9. 10. 11.

Appendant.

1 *Vid. Abeyance Par.* 3.

Aſſent & Conſent.

1 L' Aſſent del major part d'un *Corporation* al un Act, doit eſtre *ſimul & ſemel*, auterment eſt *Aſſenſus*, mes nemy *Conſenſus*. 48.

2 Quant Aſſent apres, donera force al choſe fait devant, & quant nemy. *V. Relation. Par.* 4. 5.

Avowry.

1 En Avowry pur aid pur File marrier, ou faire Fits chivaler, eſt bon Plea en bar, a dire que l' avouant n'ad tiel Fits, ou File en vy. 2.

B.

Baſtard & Baſtardy.

1 L'Ordinary ne poet trier Baſtardy ſans command per *Breif le Roy* ſur un ſuit en un Temporal Court: Car le Court Chriſtian n'avoit unques Juriſdiction de entermedler ove temporal Enheritance, *directè* ou *indirectè*. 52. 54.

Commenda.

1 COmmenda fuit primerment invent per Pape *Leo* 4. *An. Dom*, 848. 79.

2 Commenda d'un Egliſe ove Cure ne doit regularment eſtre pur pluis que 6 mois. 76, 79.

3 Mes un Benefice ſans Cure poet bien eſtre done en *perpetuam Commendam*. 76.

4 Faculty a tener Benefice ove Cure en *perpetuam Commendam*, eſt bon a tiel Perſon que eſt plein & perfect Incumbent al temps del Diſpenſation fait a luy: Mes nemy a Ceſtuy que n'ad riens en le Benefice. 76, b. 77, 78.

5 Qui vient eins un Egliſe ou un Abby *per Commendam*, n'eſt *Perſona*, ou *Abbas*, mes *Procurator tantum*. 76. b. *ſed Quære*. 82. a. b.

6 Eveſque que ad *Diſpenſation* de reteiner un Benefice en Commendam, ne paiera *firſt fruits* arrere pur ceſt Benefice. 77.

7 *Commenda Temporalis* eſt forſque *ſequeſtratio*, & poet eſtre grant per cheſcun *Ordinary*, *per tempus ſemeſtre*; & tiel Commendatory eſt *tantum Adminiſtrator Eccleſiæ*. 82. b.

8 *Commenda Perpetua* ne poet eſtre grant per aſcun *Ordinary*, mes ſolement

ſolement per le *Roy* ou ses Delegates. 82. b.

9 *Commenda perpetua* eſt en touts choſes egal al un Title. 83.

Common.

1 Common ſans number purchaſe per un *Villein* n'alera al Seigneur, ne ſoit ſurcharge al prejudice des terre Tenants. 2.

2 *Vid extinguiſhment Par.* 1.

Confirmation.

1 Un Grant per l'Eveſque de *Meth* en *Ireland* & ſon Clergy, il n'ayant ascun Dean & Chapter, eſt bon ſans auter confirmation. *admit.* 1.

2 Un Confirmation per le *Preſident* ou *Commiſſary* del Dean & le Chapter (il eſteant Deputy del Dean) n'eſt bon, *quia* ſon Proxy doit eſtre un del Chapter pur charger les poſſeſſions del Egliſe. 47. b.

3 Un Fait de Confirmation que ad le Chapter ſeal fix a ceo, ove le Conſent del minor part del Chapter, ne poet eſtre fait bon per le ſtraggling aſſents des auters Prebends done apres. 48. b.

Corporation.

1 Le Corporation n'eſt diſſolve, per le ſurrender des Monaſteryes, ou per l'Act de *Parliament* que done ceux al *Roy*, nes per le deraignment des Religious Perſons eſt diſſolve. 1. b 3. b. 4.

2 Un *Dean* ne poet faire proxy pur charger les Poſſeſſions del Egliſe ſi ne ſoit un del Chapter; come les Proxies en Parliament doient eſtre membres del meſme le meaſon; Mes poet faire un auter ſon Commiſſary. 47. b.

3 Le *Dean* & le Major part del *Chapter* font le Corporation, & lour Act eſt l'Act del Corporation; comment que les auters ne agreont. 48.

4 Le *Dean* & *Chapter* ne ſont confine a lour Chapterhouſe, mes poient aſſembler & faire lour Acts aliors, mes doient eſtre *Capitulariter Congregati Simul & Semel* & nemy Scatteringly, & al ſeveral Jours, car auterment n'eſt l'Act del Corporation, mes *Factum ſingulorum. Et quod a principio non valet, quia factum a minori parte Capituli, non poteſt convalidari per conſenſus particulares ſupervenientes.* 48. a. b.

5 Le *Fait* dun Corporation ne beſoin delivery, come le Fait dun naturall Perſon, mes l'Appoſition del common Seale ſolement don perfection a ceo, 44. b.

6 *Eveſque*, *Dean* & *Parſon* ſont incorporate per le Common Ley. 45. b.

7 *Vid. Grant le Roy. Par.* 27

County Palatine.

1 *Roy d'Engleterre* poet bien create un Countee Palatine. 60. b. 61 a. b.

2 Sont trois Countyes Palatine en Engleterre, *Cheſter*, *Durham* et *Lancaſter*. *Ely* & les Marches de

Gales ne ſont Counties Palatine. 61. b.

3 Cheſcun Countee Palatine eſt Seigneur del un entire County, & ad en ce o *Jura Regalia*, que conſiſt en Royal Juriſdictions et Royal Seigneuryes. 62.

4 Iſſint il avera touts Courts & Offices de Juſtice, que le Roy ad; & nul *Brief* del *Roy* courge en County Palatine, forſque *Brief d'Error*, que eſteant le dernier Reſort & Appeal eſt except hors de touts leur Charters. 62.

5 Les Counties Palatine de *Durham* & *Cheſter* ne ſont per *Preſcription*, contra liver de E. 4. 62. b.

6 Countee Palatine avera Royal ſervices, & poet creator Barons, & Tenures en *Capite* de luy meſne, accompanie avec touts les Preroga tives que ſont incident al Tenure en *Capite* del *Roy*. 62.b.63.

7 Iſſint il avera Royal Eſcheats, *viz.* Eſcheats de Treaſon, come le Roy avera, des terres tenus de touts auters Seigneurs. 63.

8 Mes il n'avra Eſcheats de Treaſons que ſont faits Treaſons par le *Parliament* apres l'erection del County Palatine 15. 63.

Courts Eccleſiaſtical.

1 Le Diſtinction de Cauſes en Eccleſiaſtical ou ſpiritual, & Civil ou Temporal, ne vient del nature des Cauſes mes del quality des Judges que determine eux: Et ad commencement en le Court de *Rome*. 98.

2 Cauſes Matrimonial & Teſtamentary fueront civil cauſes & ſoubs le *Juriſdiction* del Civil Magiſtrate: mes apres le Conuſance de eux grant al Prelates del Clergy per Chriſtian Emperors & Roys. 51. b. 97. b. 98.

3 Le *Roy d'Engleterre* eſt le Fountaine de tout Juſtice & Juriſdiction, en touts cauſes, cybien Eccleſiaſticall que Civil; & ad ſuper intendency ſur leur Proceedings, come appiert per Briefs de *Prohibition* &c. direct al Eveſques. 51. b. 52. 98.

4 Eccleſiaſtical Judge eſteant command par *Brief* le *Roy*, faire inquiſition de legitimation ou matrimony, ne doit ſurſeaſe ſur aſcun Appeal ou Inhibition, mes doet proceed tanque il ad certify le Court del *Roy*. 53. a. b. 54.

Cuſtome & Cuſtomer V. Subſidy.

Cuſtome V. Preſcription.

1 Cuſtome repugnant al rule del Common Ley poet eſtre reaſonable et bone, come *Burgh Engliſh* & *Gavelkind*. 30.

2 Iſſint eſt le Cuſtome de turning le Plough ſur headlong d'un auter, & de drier nets Sur auter terre. 30. 32.

3 Iſſint eſt le cuſtome que le Feoffment del tenant en tayle ove Garranty ne ſerra Diſcontinuance. 30. 3

4 Pluſors Cuſtomes en le *Negative* encounter expreſſe rules del Common Ley ſont bone, come que Feme

Feme n'avera *Dowr* ou elle ad part des deniers pur le ſale del Terre. 30. b.

5 Iſſint eſt le Cuſtome en *Kent* que le ſeigneur n'avera terre per Eſcheat: Et le Cuſtome que ſi home marry Widow elle n'avera *Dower*, 30, b.

6 Le Cuſtome de *Denbigh* en *Gales*, que le ſurrender de terres d'uo Feme cnvert, eſteant examine oveſque ſa Baron en le Court la, liera luy & ſes Heirs neſt tol per l'Eſtatute. 27 H. 8. c. 26. 30. b.

7 Si Terre en *Burgh Engliſh* ou *Gavelkind* ſoit done en tayle ceo alera al Heirs per le Cuſtome. Et le Poſſeſſion del Roy ne extinguiſh tiel Cuſtome. 31.

8 Si Terre en *Gavelkind* ſoit leaſe pur vye, Remainder al droit heirs de J. S. ceo alera al ſon eign fits, car ceo eſt noſme de purchaſe. 31.

9 Cuſtome eſt un reaſonable Act, iterated, multiplied, et continued per le People, de temps dont Memory ne court. 32.

10 Cuſtome ne poet eſtre eſtabliſh per *Grant le Roy*, ne per act de *Parliament*, mes eſt *Jus non Scriptum.* 32.

11. Un Cuſtome encounter Reſon eſt Void. 32. b.

12 Un Cuſtome prejudiciall al Intereſt de particular Perſon lou eſt pur le General Benefit poet eſtre bone. 32. b.

13 Iſſint eſt le Cuſtome de faire Bulwraks ſur terre dun auter pur defence del Realm, & de razer meaſons *in publico incendio.* 32. b.

14 Un Cuſtome beneficial al un *tantum* & injurious al multitude n'eſt bone. 38. b.

15 Iſſint le Cuſtome deins un manour, que nul Commoner mettera eins ſes avers, tanque le ſeigneur ad miſt eins ſes avers, eſt void. 32. b.

16 Iſſint Cuſtome que le ſeigneur avera fine de ſon Franktenant pur mariage de ſa Fille, & que il deteinera diſtreſſe pris ſur les demeans tanque fine ſoit fait pur le damage à ſa Volunt, eſt void. 33.

17 Iſſint Cuſtome que le Seigneur prendra pur Harriot le beaſt d'Eſtranger levant & couchant ſur la terre del Tenant; Et que le Tenant ſerra amerce s'il ne miſt avers en le Pound del Seigneur, eſt Void. 33.

18 Cuſtomes que commence per tort & uſurpation, & nemy per voluntary conſent del People, ſont unreaſonable, & void, en Ley. 33.

19 Cuſtome doit eſtre certain, Cuſtome que quant infant eſt de tiel age que il poet counter 12 *d*, ou mea ſure un alne de drape, ſon Feffiment ſerra bone, eſt void pur l'incertainty. 33.

20 Iſſint Cuſtome que ceſtuy des Tenants del mannour que primes vient al lieu ou &c. avera touts windfalls la, eſt void pur l'incertainty. 33. *Vid Par.* 27. *Contra.*

21 Diſcontinuance deſtroy un Cuſtome, come continuance fait ceo. Et iſſint ſi ſeigneur del manour leaſe *Coppyhold* terres pur ans ou pur vy accordant al courſe de Common ley, le *Coppyhold* eſt deſtroy. 33. b.

22 Cuſtome

22 Cuſtome que ſe exalt ſur le *Prerogative* del *Roy*, eſt void envers le *Roy*. 33. b. 36. b.

23 Iſſint le Cuſtom de *London* de faire Corporations eſt void. 33. b.

24 Cuſtome de *London* de reteiner biens miſe en Mortgage, tanque Satisfaction ſoit fait del money apprompt ſur eux, ne extend al Jewels del *Roy*. 33. b.

25 Cuſtome que tout ouſterment exclude les Filles de enheriter eſtate en Fee-ſimple, eſt unreſonable, & void. 34. b.

26 Le Cuſtome de *Taniſtry* en *Ireland*, que terre diſcendera *Seniori & digniſſimo viro ſanguinis & cognominis* de ceſtuy que moruſt ſeiſi, eſt void pur l'incertainty del Perſon, & del Eſtate. 35.

27 Cuſtome que le Tenant que primes viendra al Bois avera les Windfalls, eſt bon & certain. 35. a. b. *Vid. Par.* 20. *Contra.*

28 Cuſtome que courge ove le Tenancy, n'eſt deſtroy per conveyance *ſecundum curſum communis legis*, come *Gavelkind*, & *Burgh Engliſh*. 36. b.

29 Cuſtome que courge ove le ſeigneury, come *Coppyhold*, ou *Homage Auncеſtrel*, eſt deſtroy per tiel conveyance. 36. b.

30 Le Cuſtome de *Kent*, *The Father to the Bough, and the Son to the Plough*, tollera de l'Eſcheat de common Perſon, mes ne extend al Treaſon, ou le Roy avera l'Eſcheat. 37.

31 Terres de Cuſtome de *Taniſtry*, ont eſtre touts jours ſeiſi, per le courſe d' Exchequer per Treaſon, come Eſcheat al Corone, comment que le Taniſt n'avoit eſtate d' Enheritance. 37.

32 Per le Cuſtome de *Gavelkind* en *Kent* terre eſt partible enter les prochein heirs males, queux ont certain eſtate en lour purparties: Baſtards ſont exclude la: Feme eſt dowable del Moiety: & pur default des Males females ſont inheritable. 49. b. 50.

33 Le Cuſtome de *Gavelkind* en *Ireland* eſteant incertain, admittant Baſtards, & excludant Femes de Dower, & Filles del inheritance, eſt void en ley. 49, 50.

34 Le Cuſtome per que les Femes de *Iriſh* Seigneurs clamont d'aver ſole property en certain biens durant le Coverture, ove power de diſpoſer eux ſans Aſſent del Baron, n'eſt bon. 50. b.

D.

Dean & Chapter. V. Corporation.

Diſmes.

1 LE *Roy* avera Diſmes per le Common Ley; Car il eſt *Perſona mixta*. 4.

2 Diſmes ſont part des profits de terre; Mes ne ſont *extinct* per Unity de Poſſeſſion, *quia* ſont originalment due en Perſonal reſpect. 6.

3 Diſmes ſerront pay *de proventu Fluminum*. 56.

4 Devant le Diviſion des Pariſhes,

riſhes, cheſcun *Eveſque* avoit le Diſtribution de touts les Diſmes deins ſon *Dioces.* 81.

Diſpenſation.

1 Diſpenſations & le *Non Obſtante* fueront invent & primerment uſe en le Court de *Rome.* 69. b.

2 Un *Non obſtante* prejudicial al droit de lay Patrons eſt void: Et Diſpenſations, Unions, &c. ne ferront tort al tierce Perſon, & ne ſerront grant *niſi ſalvo jure Patronatus, & vocatis quorum intereſt.* 74. a. b 77.

3 Diſpenſation de prender le Poſſeſſion d'un Benefice, ſans aſcun formal & legal Collation ou Preſentation, eſt void: Et le Clerk que iſſint enter eſt Abator. 74. a. b. 78.

4 Diſpenſation de reteiner le primer Benefice, devant promotion ou l'acceptance del ſecond, eſt bon, mes apres tiel acceptance ou promotion neſt bon, car le primer Egliſe ſuit *ipſo facto* void, & eſt tort al Patron. 77.

5 Mes le Ley que ordain, que le primer Benefice ſerra void ſur acceptance del ſecond, poet eſtre *diſpenced with.* 77.

6 Diſpenſation al clerke de reteiner primer Benefice, apres preſentation & inſtitution al ſecond, mes devant induction al ceo, vient trop tard & n'eſt bon. 78.

7 *Vid. Stat.* 25. *H.* 8. *c.* 21. *Par.* 9.

8 *Vid. Prerogative. Par.* 12, 13, 14, 15.

Donative v. Ordinary.

Dower.

1 Le *Roy* poet aſſigner Dower ſans limiter aſcun Eſtate. 46.

2 *Vid. Cuſtome, Par.* 4, 5.

E.

Error.

1 BRief de Error courge en *County Palatine.* 62.

2 Brief de Error giſt en *B. R.* ſur erroneous Judgment don en le chief place en *Ireland.* 62.

Eſtate.

1 Si terres ſont don al *J. S.* & ſes heirs Males il ad *Fee-Simple*: Et l'heir Female enheritera en default del heir male. 34. b.

2 Eſtate d' *Enheritance* doit aller ou en Natural Capacity al Heirs, ou en Politick Capacity al Succeſſors: Autrement eſt void pur l'incertainty, come *Tanistry* eſt. 36.

3 Touts terres que fueront en maines de ſubjects, & iſſint noſmes en livre de *Domeſday*, ſont *Frankfee.* 41. b.

4 Un Eveſque, Dean, ou Rector ne poet aver Eſtate limit a luy a *Volunt*, pur *Ans*, ou pur *Vye*, ou en *Tayle*, en ſon Eveſquery, Deanry, ou Rectory: Mes ils ont Eſtate en *Fee* al meins. *Viz.* a eux & leur ſucceſſors. 45. b.

5 Si terre ſoit grant al Major & Commonalty, ſans pluis dire, ils averont *Fee ſimple.* 46

6 *Vid. Grant. Par.* 3.

7 *Vid. Grant. le Roy. Par.* 24 25, 26, 27, 28, 29.

Evesque.

1 Touts Eveſques fueront fait per le *Roy*, & inveſt *per annulum & Baculum*, mes per le Charter de *Roy John*, fueront elect per Dean & Chapter ; *petitâ prius licentiâ eligendi.* 46, 89, 92, b.

2 Un Eveſque ne poet tener un auter Benefice ove cure deins ſon Dioces, & s'il ad tiel Benefice devant ſon Promotion ceo devient void. 68. b. 69

Expoſition de Parols.

1 *Buttlerage.* 8. *b*
2 *Canſinny.* 49
3 *Cocquet.* 13. *b*
4 *Commenda.* 74. *b*. 75. *b*
5 *Conſuetudo.* 16. *a. b*
6 *Currant Money.* 27
7 *Cuſtomes.* 8, 9
8 *Cuſtuma magna & Antiqua.* 8. *a. b*
9 *Cuſtuma parva & nova.* 8. *b*
10 *Denarius.* 24
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12 *Murage.* 13
13 *Poundage.* 12. *b*
14 *Priſage.* 8. *b*
15 *Proxy.* 1. *b*
16 *Sterling.* 22. *b*. 23. *a. b*. 24
17 *Subſidy.* 9, 10. *b*

E.

18 *Taniſtry.* 28. *b*
19 *Theolonium.* 16

Extinguiſhment.

1 *Common ſans number* grant al Abbe & ſes ſucceſſors, apres le diſſolution ſerra extinct, & ne deviendra al *Roy*, car il puiſſoit ſurcharge la terre. 2

2 *Annuity* al un Prior hors d'un Parſonage, ſerra extinct a touts jours per l' Appropriation del meſme Parſonage al Priory. 2. b

3 Si particular tenant grant ou ſurrender ſon eſtate al ceſtuy en Revertion, le particular eſtate n'eſt extinct : Car ſi le tenant ad charge l' eſtate ove rent, ou auter encumbrance, l'eſtate remainera a ceſt entent. 4. b

4 Choſes iſſuant hors del terre, come *ſeignory*, *Rent charge*, &c. ſont ſubject al Extinguiſhment a touts entents. 5

5 Si ſeigneur grant ſon *ſeignory* al terre tenant & eſtranger, la ſerra nul Joyntenancy, car moiety del ſeignory eſt extinct ; & ſi ſeigneur releaſe al Tenant ceo va per voy d' Extinguiſhment. 5

6 *Real Actions and Conditions* ſont ſubject al Extinguiſhment per *Unity de Poſſeſſion.* 5

7 Choſes que ont lour Original hors del terre, & nemy aliors, & ſont due en reſpect del terre *tantum*, & ſont part del profits del terre, ſont *ſemper* Extinguiſh per *Unity de Poſſeſſion*, ſi home ad egal eſtate en ambideux. Come ſont, *Seignory*,

ſeignory, Rent charge, Common, Chimin, &c. 5

8 Choſes ne iſſuant hors del terre come part des profits, mes eſteant derive aliors, & due pur auter reſpect, comment que ſont priſe & eu deins certain terre, ne ſont Extinguiſh per *Unity de Poſſeſſion.* Come *Warrens, Franchiſes, Waif, Stray, Wreck, Leet.* &c. 5. b

9 Choſes que ſont part des profits de terre, & payable per tiel Perſon *tantum* que ad le terre, uncore ſi ſont commence per aſcun perſonal repect, & nemy en reſpect del terre, & iſſint le Perſon ſolement charge, & nemy le terre, ne ſont Extinguiſh per *Unity de Poſſeſſion.* Come *Annuities, Diſmes, Proxies*, &c. 5. b. 6

10 Si *Annuity* ſoit grant en Fee, per apt parols de charger l' heir ou Succeſſor, comment que l' heir ne ſerra charge ſans aſſets de terre, uncore ſi le grantee enter en la terre, ceo ne ſuſpend, ne Entinguiſh l' *Annuity.* 5. b

11 Parſon d'un Egliſe fuit charge ove *Annuity* per Preſcription, le Parſonage hors de quel, fuit appropriate al un Priory, le Priory ſuppreſſe, & don al *Roy* per *Parliament* ſans *ſaving* del *Annuity*, le *Roy* grant le Parſonage ouſter, l' *Annuity* revive. 6

12 Si Diſſeiſee quant ſon entry eſt toll releaſe al terre tenant tout ſon droit, ceo ne enurera per voy d' Extinguiſhment, car Droit ne poet pas morier. 5

F.

Faits.

1 LE Fait d'un *Corporation* ne beſoin aſcun delivery, mes l' appoſition del Common Seale done perfection a ceo. 44. b

Franchiſes.

1 *Vid. Grant le Roy, Par.* 2, 13, 14, 15, 31.

2 *Vid. Preſcription, Par.* 8.

G.

Gard.

1 SI home tient terre de divers ſeigneurs, & moruſt, ſon heir ſerra en Gard al ceſtuy de que il tient per Priority. 35

Gavelkind. V. Cuſtome.

Grant.

1 Annuity done per le *Roy* al Duke ou Countee ſur ſon Creation, ne poet eſtre grant ouſter, *quia* eſt *Incident* al ſon Dignity: Mes poet eſtre grant ou ſurrender al *Roy.* 2. b. 4. b

2 Si un home grant al auter tant des arbers que poent reſonablement eſtre ſpare, le grant eſt void pur l' incertainty. 36

3 Si

3 Si *Common Perſon* grant Rent ou auter choſe, que giſt en grant, ſans limitation del *Eſtate*, per delivery del Fait *tantum*, Franktenement paſſa. 45

4 Si un grant al auter *Aquam ſuam*, le *Piſcary* en ceo paſſera, 55. b

5 *Piſcary* giſt en grant & en tenure, & per grant de ceo le ſoile paſſa. 55. b

6 Queux choſes giſont en Grant, queux en Preſcription. *Vid. Preſcription, Par.* 1.

Grant le Roy.

1 Si le Roy grant *Cuſtumam vocat* le *Murage*, nul *Cuſtome* ou *ſubſidy* paſſe per ceux parols. 13

2 Charter le Roy a un Ville, de touts *Franchiſes* que un auter Ville ad, ſans expreſſer les *Franchiſes* en Particular, eſt incertain & void. 13. b

3 *Cuſtuma magna & antiqua* eſt bien grant per le Roy per les parols de Cuſtome *vocat* le *Cocquet*. 14

4 Si le Roy grant al certain Merchants de reteiner lour *Cuſtomes*, uncore les *Cuſtomers* ſont charge, & accomptable al Roy, pur les *Cuſtomes*: Mes doient aver allowance per Petition. 13. b. 14

5 Mes quant le Roy grant les *Cuſtomes* d'un Ville d'eſtre collect per lour proper *Officer*, l' *Officer* del Roy n'eſt ac accomptable. 14

6 Si le Roy grant a un Corporation *quod omnes inhabitantes, &c. de Nova Cuſtuma vocat le Pondage in perpetuum ſint quieti & exonerati*, tiel Charter ne done le *Pondage* al Corporation, mes tend al diſcharge de cheſcun particular Merchant, 14

7 Mes tiel grant ne poet diſcharge novel *Pondage* grant per *Parliament* apres le date del Charter. 14. b

8 Si le Roy grant al Abbe que touts ſes Poſſeſſions ſerront diſcharges de Diſmes grant en *Parliament*, l' Abbe ne poet collecter les Diſmes de ſes proper tenants, & reteiner a ſon proper uſe. 14

9 Eſt teus en le Abbe de *Walthams caſe* que le Roy ne poet grant aſcun parcel del Diſmes del Clergy, devant que ſoit grant per le Convocation. 14. b

10 Le Roy ne poet, per ſon licence grant devant, diſcharger le Penalty d'un *Act* de *Parliament* que eſt d'eſtre fait. 14. b

11 Mes le Roy poet diſpencer ove future choſe en que il ad Enheritance, come il poet grant que l' heir de ſon Tenant ne ſerra en gard, ou que ſon Tenant ne ſerra puny en *Ceſſavit*, car le Roy ad Enheritance en le ſeignory. 14. b. 15

12 Quant grant le Roy extend al future temps, uncore ſerra entend de choſes preſent, & *in eſſe* al temps del Grant. 15

13 Come ſi le Roy grant a moy *Liberties* en touts mes terres, jeo n'avera les *Liberties* en les terres queux jeo purchaſe apres. 15

14 Iſſint ſi le Roy grant *Liberties* en touts mes Demeſnes, & apres Tenancy eſcheat, jeo n'avera les *Liberties* en terres novelment eſcheat 15

15 Le Roy grant *Catalla Felonum quorumcunque*, & apres per *Parliament* un Act eſt fait Felony, que ne fuit Felony devant ; le Grantee n'avera les biens d'un Perſon attainted de tiel Felony. 15

16 Si le Roy per Charter grant tiels Cuſtomes al Corporation, & pouvoir de creater *Officers* & *Cuſtomers* ; uncore ſi les *Cuſtomes* ne ſont bien grant ; le Roy appoyntera ſes *Officers* & nemy le Corporation. 15,b.

17 Grant le Roy que les Grantees ſeront *quieti de omni Conſuetudine*, ne diſcharge eux de le grand *Cuſtome*. 16,b. 17

18 General Parols en grant le Roy ne paſſeront ſpecial Royalty que appent al Corone per Prerogative. 17, 57,b.

19. Iſſint ou le Roy grant touts *Piſcaryes*, touts *Mines*, & touts *Amercements* ; Royal piſcaries, royal mines d'or & argent, & royal amercements ne paſſeront .17,57, b.

20 Ou les Parols en grant le Roy comprehend choſes royal & baſe, ſerra price en favour del Roy, & les baſe choſes paſſeront, & les royal demurreront en le corone. 17

21 Le Roy grant al un Alien eſtre quiet *de omnibus Cuſtumis, Subſidijs, &c* ; & que il ſerra cy free come les Citizens de *London* ; il ne ſerra free de *Priſage*, ſi n'eſt Specialment expreſſe. 17

22 Le Parol de *Laſtagio*, en grant le Roy, ne diſchargera de grand *Cuſtome* de 13*s* 4*d* pur cheſcun laſt de Hydes ; pur ceo que ll y ad autres laſts que de Hydes. 17

23 Grant le Roy en *Conſideration* de un Eſtate ſurrendred per un *Diſſeiſor*, ou *Abator*, eſt Void. 40

24 Si le Roy grant terres al *J. S. habendum* a luy & ſes Heirs males, ſans dire de ſon corps, le grant eſt void pur l'incertainty a touts entents, iſſint que le Grantee ne ſerra tenent a Volunt le Roy. 43

25 Iſſint eſt ou le Roy grant rent ſans Limitation d'aſcun *Eſtate*. 45

26 Si Le Roy grant al un le Deanry de ſon Frank Chappel, ſans aſcun limitation del *Eſtate*, ceo ſerra entend forſque a Volunt le Roy. 43 b. mes *Vid. Par.* 29 *contra*.

27 Le Roy par ſon Charter grant terre *Probis hominibus de D.* ſans dire *Habendum eis, heredibus, vel ſucceſſoribus ſuis* rendant Rent, ceo eſt bon *Corporation* a ceſt intent, mes ne ſont que *Tenants a volunt* del terre. 43,b.

28 Si le Roy grant l'*Office* del *Garter* Roy des *Heraulds*, ſans limitation del *Eſtate*, le Grantee eſt *Officer* a Volunt le Roy. 43,b.

29 Si le Roy grant un Deanry ſans limitation d'un *Eſtate*, le Grant eſt bon & nemy void per l'incertainty : Car un *Eſtate tantum* eſt *incident* a ceo & ne beſoin aſcun limitation pluis que en aſſignment de Dower al Widdow del Roy. 45,46

30 Grant le Roy de touts Piſcaryes, *exceptis tribus partibus Piſcariæ de le Banne* ne paſſe le quart part de ceſt Piſcary, car le grant del Roy ne paſſe rien per *Implication*. 57,b.

31 General Parols en ancient Grants donont Royal *Franchiſes*, que

ne passeront a ceſt jour per tiels grants. 62,b.

32 Le Roy ad grant al City de *London* le River de *Thames*, *& ſolum & fundum* de ceo; per vertu de quel grant ils receive rent pur warfes, & auter edifices ſur le Soil del dit river. 56,b.

H

Habendum.

1 SI Feffment ſoit fait al *J. S. Habendum* pur vye, le *Habendum* eſt void, car eſt contrary al Premiſſes. 46

I

Ireland.

1 LE Subſidy de Pondage en *Ireland* ad commencement *Anno* 14 E. 4. 11.b

2 En *Ireland* le *Roy* ad Enheritance en ceſt Subſidy. En *Engleterre* forſque eſtate per vy. 12.15

3 Le ſtandard de *Engliſh* moneys fuit eſtabliſh en *Ireland*, *An.* 12. del *Roy John* 21

4 Mes apres fuit mult difference & inequality enter *Engliſh* & *Iriſh* money. 21.b.22

5 De Ancient temps ſueront divers mints in *Ireland*, mes depuis E. 6. touts monies faits pur *Ireland*, ont eſte coine en *Engleterre*. 21. b 26.a.b

6 Le nature del *Iriſh* tenure de *Taniſtry*. 28. &c.

7 Le Nature del *Iriſh* tenure de *Gavelkind*. 49,&c.

8 Le *Brekon* ley fuit le Common ley d'*Ireland* devant le Conqueſt, mes aboliſh per l'Eſtabliſhment del Common ley d'*Engleterre*. 30,b.39

9 Le Common ley d'*Engleterre* fuit eſtabliſh en *Ireland* per un general Ordinance *Anno* 30. H. 3. mes fuit introduce gradually. 37.

10 Roy *John* feſoit forſque 12 Counties en *Ireland*, & auter Provinces fueront divide en 21 auters Counties, temps des Royns *Mary* & *Elizabeth*. 37,b.

11 Cinque principall Septs del *Iriſhry* primerment avoient grant del Roy d'aver le Benefit del ley d'*Engleterre*. 38,a.b.

12 Queux *Counties Palatines* ſont en *Ireland*. 61,b.

13 Erroneous Judgment done en le chief place en *Ireland* ſera revers en B.R. en *Engleterre*. 62

14 *Countys Palatine* en *Ireland* avoient tiel Royal Juriſdiction, & Royal ſeignory, come ceux en *Engleterre*. 63,64,65,66.

15 En temps H. 2. un ſynod del Clergy de *Ireland* fuit tenus, & ordain, *Quod omnia divina juxta quod Anglicana obſervat Eccleſia* &c. 72,b.

16 Le *Eſtatute* de 33 H. 8. c. 1 enact en *Ireland*, done al Roy le Title del Roy d'*Ireland*. 39,61

17 Le *Eſtatute* de 2 Eliz. c. 4. fait touts Eveſqueris d'*Ireland* Donative per le *Roy*. 45,b.

18 Vid mults auters *Iriſh* Statutes cite

cite en ceſt liver 30, 39, 40, 58, 61, 64, 68, 73, 80, 87.

Judges.

1 Il ſemble que ſi un *Eveſque* per ſentence deprive un Dean del Donation del Roy, ceo eſt void, & *coram non Judice.* 46. b. mes *quære*, car *dubitatur.* 44, 47

2 Judgment de Frankfee, en Court de Ancient demeſne, eſt void, & *coram non Judice.* 46. b

3 Iſſint eſt Judgment fait en le *Marſhalſea* ſur contract hors del Verge, & ou nul des parties eſt del Hoſtel del Roy. 46. b

4 Iſſint eſt Judgment en le Court d' Admiralty *de re facta in Corpore Comitatus.* 46. b

5 Et Judgment done en *Common B.* ſur Appeal de Murder port la. 46. b

6 *Vid. ordinary. Par. 6.*

L.

Ley.

1 LE *Common ley* d' *Engleterre* ne fuit introduce per le Conqueror. 40

2 Comment & quant le *Cannon ley* fuit introduce en *Engleterre.* 69. b. 70. 71

3 Aſcuns *Cannon leys* ſont per uſage & allowance fait part del *Eccleſiaſtical ley d' Engleterre.* 70. b. 72

4 Touts les *Eccleſiaſtical leys d' Engleterre* ne fueront derive hors del Court de *Rome.* 72. b

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M.

Maxims.

1 *ABſens non poteſt demandare votum ſuum niſi uni de Capitulo,* 47. *b*

2 *Ceſſante cauſâ ceſſat effectus.* 1. *b.* 3

3 *Conſuetudo ex certâ cauſâ rationabili uſitata privat Communem legem.* 32

4 *Conſuetudo ſemel reprobata non poteſt amplius introduci.* 33. *b*

5 *Deus ſolus facit hæredes, non homo.* 36

6 *Donatio Principis intelligitur ſine præjudicio tertii.* 75. *b*

7 *Incerta pro nullis habentur.* 33

8 *Jus cudendæ monetæ, niſi cui ab Imperatore conceſſum fuerit, nemo uſurpato.* 20. *b*

9 *Monetæ æſtimationem dat, qui cudendi poteſtatem habet.* 20

10 *Nulla eſt adverſus Procurationem Præſcriptio.* 6. *b*

11 *Nullum tempus occurrit Regi.* 33. *b*

12 *Oportet quod Procurator ſemper inſtitutus ſit de Collegio.* 47. *b*

13 *Qui per alium facit per ſeipſum facere videtur.* 44

14 *Quod ab initio non valuit, tractu temporis non convaleſcit.* 32

15 *Rex eſt Perſona mixta cum ſacerdote.* 4

16 The Father to the Bow, and the Son to the Plow. 30. b. 32, 37

17 *Verba currentis monetæ tempus ſolu-*

ſolutionis deſignant. 27

18 *Unumquodque diſſolvitur eodem modo quo ligatur.* 33. *b*

Money.

1 Il beſoin d'aver un certain ſtandard de Monies. 19

2 Le valuation de Money appent ſolement al *Roy*, & il poet, per ſon Proclamation, faire aſcun coyne loyal money d' *Engleterre* & eſtabliſh le ſtandard de Money coyn'd per ſon Authority. 19. b

3 Le *Roy* per ſon Prerogative, poet faire Money de quel matter & forme luy plerra, & poet changer ſon Money en matter & ſubſtance, & enhancer ou abater le valu de ceo, ou adnuller ceo, & faire ceo *Bullion*, a ſon pleaſure. 20. b

4 Mixt Money ayant l' impreſſion & l' inſcription del *Roy*, & eſteant proclaim pur loyal & *currant Money*, doit eſtre priſe & accept pur ſterling Money. 22. b

5 Mixt Money fait *currant* en *Ireland* ſolement, poet eſtre dit la currant & loyal Money d' *Engleterre*. 25. b

6 Si al date d'un Obligation, pure Money ſoit *currant*, & al temps & lieu de payment, mixt Money eſt fait *currant*, & bien tender en diſcharge del Obligation & refuſe, l' Obligor ne ſerra unques tenus de payer auter Money de meillieur ſubſtance. 26 b

N.

Nobility & Noſme.

1 ANnuity done per le *Roy* al un Nobleman ſur ſon creation ne poet eſtre grant ouſter *quia* eſt Incident al Dignity. 2. b

2 *Countee* eſt parcel del Noſme, & ne beſoin d'uſer auter ſurnoſme, & ſi ſoit omit le *Brief* abatera. 60

3 *Countee* eſt Noſme de Dignity, & d' Office, & per noſtre ley il avoit *Cuſtodiam Comitatus*, & tiel Juriſdiction come a ceſt jour le *Vicount* ad. 60

4 *Countee* eſt le pluis ancient noſme de Dignity, & devant le temps de E. 3. ſuit le ſole title de Honor en *Engleterre*. 60

5 Le primer Duke fuit create en temps E. 3. le primer Marquis en temps R. 2. Et le primer Vicount en temps. H. 6. 60

6 Eſt dit 8. H. 6. que le Noſme ou Title de *Baron* n'eſt Noſme de Dignity ou Addition. 60

7 Pur les Prerogatives d'un *Countee Palatine Vid. County Palatine. Par.* 3. 4, 6. 7, 8.

Non Obſtante V. Diſpenſation.

Office

O.

Office & Officer.

1 UN *Officer pur vy* ne poet aſſign ouſter ſon Office, ſans ſpecial parols en le grant, mes *Officer d' Enheritance* poet. 35. b

2 Terre ne poet eſtre appendant al *Office pur vy*, mes ſolement al *Office d' Enheritance*. 34

3 *Temporal Office* poet eſtre grant a Volunt, ou per Vye, ou en Fee, ou en Tayle, & aſcun temporary Eſtate poet eſtre limit en ceo. 45. b

4 Mes *Eccleſiaſtical Offices* come Eveſquerie, Deanry, & Rectory ne poent eſtre limit, mes doient aller en Politique Capacity, en courſe de ſucceſſion, tiels Officers eſteant incorporate per le Common ley. 45. a. b

5 *Vid. Grant le Roy. Par.* 4. 5, 16, 28

Ordinary.

1 Le *Viſitation* d'un Hoſpital ne ceſſe per le Surrender ou l' Act de Parliament que don ceo al Roy, mes per le deraignment des religious Perſons. 1. b

2 Le Roy meſme *viſitera* ſes Frank Chappels & Hoſpitals & nemy l' Ordinary. 4

3 Abbies & Religious meaſons fueront viſitable per l' Ordinary, *admit*. 3

4 L' Ordinary n'ad rien a medler

ove un *Donative*, que paſſa per Done ſans Inſtitution ou Induction. 46. b

5 *Donatives* del Roy ne ſont *viſitable* per l' Ordinary, & ſil viſit eux *Prohibition* giſt, mes ſont *viſitable* per le ſeigneur Chancellor del Realm, ou ſpecial Commiſſioners. 46. b. 47

6 *Adminiſtration* des biens d'un inteſtate, que ad *bona notabilia* en divers Dioces, grant per l' Ordinary d'un Dioces, eſt totalment void. Car il n'ad aſcun *Juriſdiction* del cauſe. 47

P.

Parols V. Expoſition de Parols.

Parſon.

SI un Parſon ſoit fait *Dean* le Parſonage devient. Void. 69

Partition.

1 Si un *County Palatine* diſcend al divers Coparceners, & ils font Partition, cheſcun d'eux avera un ſeveral *County Palatine*, & les liberties & Prerogatives en ceo. 61. b

2 Sic ſi Coparceners d'un Manour font Partition, cheſcun avera ſeveral Manour & Court Baron. 61. b

Piſcary.

1 Per le Common ley home poet

aver ſeveral intereſt en un eau, ou river, & en un Piſcary. 55,b.

2 Per quels ſeveral Briefs un Piſcary eſt demandable. 55,b.56

3 Diſtreſſe poet eſtre priſe en un Piſcary, & home poet aver Franck tenement en ceo. 55,b.

4 Home poet faire Baylif de ſon Piſcary. 56

5 Le Piſcary de cheſcun navigable River cy haut que le mer flow & reflow en ceo eſt Piſcary royal & appent al Roy. 56,57

6 Le Piſcary de cheſcun River nient navigable appent al Terretenants *ex utrâque parte Aquæ* de common droit. 56,57

7 Si un River nient navigable courge enter deux Mannors, & eſt le bondary enter eux, l'un Moitie del River & piſcary appent al un ſeigneur. & l'auter al auter. 57,b

8 Per queux Parols un piſcary paſſera & *quid* paſſera per grant d'un Piſcary. Vid. *Grant Par.* 4,5

9 *Vid Grant le Roy Par* 30.

Plenarty.

1 Preſentation & Inſtitution fait Plenarty enter common Perſons: Mes nul Plenarty vers le *Roy* ſans Induction. 76,82,b.

2 *Vid. Stat. Weſtm.* 2,c.5, *Par.* 5

Pluralities.

1 Per antient *Canons* & *Councels*, Nul Eccleſiaſtical Perſon poet aver deux Beneſices ove cure, *Simul & Semel*; mes le primer eſt void per le priſel del ſecond. 69

2 *Vid Stat.* 21 H.8.c.13, *Par.* 8

Prerogative le Roy.

1 *Reges ſacro oleo uncti Spiritualis Juriſdictionis ſunt capaces, &c.* Et le *Roy* eſt capable de Diſmes al common ley. 4

2 Per l'ancient ley del Relm, le *Roy* ad pouvoir de Viſiter reformer & correcter touts enormities en l'*Egliſe*, et per les Statutes de H.8, le *Roy* eſt ſolement reſtore a ſon Juriſdiction uſurpe per l'Eveſque de *Rome*. 4

3 En quel Manner, et per queux degrees, le *Pape* ad uſurpe ſur les *Roys* d'*Engleterre*. Le Caſe de *Commenda*, & le Caſe de *Premunire*, per tout. 69,&c.85,&c.

4 Le *Roy* d'*Engleterre* ne ſerra dit en Poſſeſſion d'aſcun terre, per virtu del primer Conqueſt, ſi ne appiert per aſcun Record, que le primer Conquerour ad ſeiſi ceſt terre al temps del Conqueſt, & appropriate ceo, come parcel de ſes proper demeſns, come appiert per le Livre de *Domeſday*. 40.b.41

5 Cheſcun navigable River, cy haut que le mer flow & reflow en ceo, eſt *Flumen Regale*, & le *Piſcary* de ceo eſt *Piſcary Royal*, & appent al *Roy* per ſon Prerogative. 56,57

6 Le mer et les Branches de ceo, cy haut que le mer flow et reflow, ſont le proper Enheritance del *Roy*. 56

7 Le *Roy* avera les grands poſſeſſions del mer, *Balenas & Sturgiones*, queux ſont *piſces regales*. 56

8 Le *Roy* avera *Wild Swannes*, come

come *Volatilia regalia*, Sur le mer & les Branches de ceo. 56

9 Le *Roy* avera terre gained hors del Mer; Et wreck del Mer, per ſon Prerogative. 56,a.b.

10 Touts Ports & Havens que ſont *Oſtia & Januæ Regni* appertient al *Roy*. Et Devant le *Stat* 18. E3,c. 3. Nul Subject puiſſoit paſſer ouſter le mer ſans ſpecial licence del *Roy*. 56,b.

11 Le *Roy* per ſon Prerogative puiſſoit agarder Commiſſion de Sewers devant aſcun Statute; & provider que navigable ſtreams ſoient faits paſſable. 56,b.

12 Les *Royes* d'*Engleterre* de temps en temps, en cheſcun age devant le temps H.8. ont uſe de granter *Diſpenſaions* en *Cauſes Eccleſiaſtical.* 72,b.73

13 Le *Roy* eſt le ſupreme *Ordinary*, & poet *diſpencer* ove *Eccleſiaſtical Ley*, cybien que pardoner tous offences encounter eux. 73

14 Eſt dit. 11 H.7. *Prerogative le Roy* ne ferra tort al Subject: & il ne poet *diſpencer* ove *Nuſance*, ou que home ſerra ſon Judge demeſne. 75

15 Le *Roy* ne poet *diſpencer* ove le Common ley per un *Non Obſtante*. 75,b.

16 *Vid. Cuſtome Par.* 22,23,24,30, 31

17 *Vid Grant le Roy.* per tout

18 *Vid Money. Par* 2,3,4,

19 *Vid Preſcription. Par.* 2,5,6,8

Preſcription

1 Aſcuns choſes giſont en *Grant* come Conuzance de Pleas, & *Catalla Felonum.* Auters giſont en Preſcription, come d'aver Free Garren en auter terre, ou prender *Murage*, *Pontage*, ou *Picage*. 13,a.b.

2 Un *Subject* ne poet preſcriber d'eſtre diſcharge del ancient Cuſtome payable pur Merchandizes, ou de receiver ceo al ſon uſe demeſne: mes pur choſes caſuall, come waif, ſtray, wreck, il poet preſcriber. 17, a, b.

3 Home ne poeſt regularment preſcriber en choſe, que al commencement ne poet eſtre bien grant. 33,b.

4 Preſcription pur un Seneſchal d'aver un demy marke, ou cheval, de cheſcun tenant pur tenir ſon Turne, eſt void, pur l'incertainty. 33

5 Si home ad Toll, ou wreck, ou ſtray, per preſcription ceo ne extend al biens le *Roy*. 33,b.

6 Iſſint Preſcription d'aver Sanctuary pour Treaſon, ou d'aver *Catalla Felonum*, eſt void envers le *Roy*. 33, b. 37

7 Preſcription ne poet eſtre d'nn choſe incertain, come *Grant* de tiel choſe eſt Void. 33,b.36

8 Nul *Franchiſe*, que *ſe exaltat in Prerogativam Regis* poet eſtre gain per Preſcription. 62,b.

Prohibition.

1 Si l'*Ordinary* commence a trier Baſtardy, ſans command per Brief le Roy ſur ſuit commence en Temporal Court, Prohibition giſt, Mes ſi ſoit accompany ove Fraud, eſt miſdemea-

demeanour puniſhable en le Star Chamber. 52

2 Prohibition giſt al *Ordinary* ſil viſit les Donatives del Roy. 46.b.47

Proviſo.

1 Si Feffment ſoit fait al J.S. & les Heirs, *Proviſo*, que les Filles ne enheriteront, ceo eſt void *Proviſo*. 34,b.

Proxy.

1 Un Proxy eſt un exhibition don al Viſitor pur ſes travelling charges. 1,b.

2 Per le *Canon ley. Procuratio eſt exhibenda ſecundum qualitatem Perſonæ viſitantis, & ſubſtantiam viſitatorum.* 2,4.

3 Proxyes n'avoient lour original en le Primitive Eſgliſe. 2,b.

4 Al primes fueront faits *in eſculentis & proculentis*; mes ove temperance, *ne Jejuniorum doctrinam rubentibus prædicent buccis.* 3

5 Mes apres cheſcun proxy fuit reduce al reaſonable et certain ſumme d'Argent, payable annualment en nature de penſion, al Ordinary. 3

6 Iſſint reduce al certain ſumme ſont parcel del certain Revenue del Eveſque. 3,b.

7 Proxies en lour original nature, eſteant duties payable pur Viſitation, fueront grantable al Roy: Specialment quant ſont convert al certain Summe, en nature d'un Annuity. 4,a.b.

8 *Nulla eſt adverſus Procurationem Preſcriptio.* 6,b.

9 Proxyes (come Diſmes) ne ſont ſubject al Extinguiſhment per unity de Poſſeſſion. 3,b,6,b.

Purpreſture.

1 Wears erect ſur un River, que eſt *Flumen Regale*, ſont Purpreſtures; que poent eſtre fait cybien *in aquis Regiis, quam in viis Regiis.* 57

Relation.

1 SI home en Action de *Debt* demand 40*l.* ſerra entend Money que courge al temps del Brief purchaſe. 27

2 Si home port *Debt* ſur fait pour 30 quarters de orge, le Jury enquirera del price al temps del payment 27,b.

3 Judgment en *Debt* done en *Engleterre* & Execution agard al Deputy d'*Ireland*, de levier le det la, ſerra levy ſelonque le rate de *Iriſh* Money. 28

4 *Aſſent* apres un Act, aſcun foits donera force al ceo *ab initio*, come Atturnment al grant de Reverſion devant, & Agreement de J. S. al diſſeiſin

ſeiſin fait al ſon uſe, fait luy diſſeiſor. 44. b

5 Mes ſi Feme ſuffar Recovery de ſa Joyntura encounter le *ſtat* de 11. H. 7. ſans *aſſent* de ceſtuy en Reverſion, qui apres releaſe al Recoveror per Fine, ceſt *Aſſent* vient trop tard: Et ne Relatera al Recovery pur faire ceo bon. 48. b

Remainder.

1 Remainder *Seniori puero de Corpore ipſius W. legitime procreato*, eſt bon Remainder. 35

2 Leaſe pur vy, Remainder al ceſtuy que primes viendra al *Paules*, eſt bon Remainder. 35

Rent.

1 *Rent Charge* grant pur un chemin ſerra ſtop, ſi le chemin ſoit ſtop. 1. b

2 Rent pur *Caſtle Gard* remaine comment que le Caſtle ſoit dirute ou decay. 3

S.

Statutes.

1 CHoſes en *Eſſe* al temps del feſans d'un *Act*, poent eſtre bien preſerve & ſave per *l' Act*: Mes choſes extinct devant ne poent eſtre revive per un *Saving*. 3. b. 4

2 Abſurd & *Flattring Saving* en un *Act* de *Parliament* eſt void. 2

3 Les *Statutes* encounter *Proviſors* fueront fait en declaration del Common ley, mes ne extendent al Commendas. 80. b. 81

4 Divers *Statutes* encounter *Proviſors* ſont explain per tout le Caſe de *Præmunire*. 85. &c.

5 Per le *Statute* de *Weſtm.* 2. c. 5. Ceſtuy que plead *Plenitudinem Eccleſiæ*, doit monſtror de quel preſentment, & pur ceo Parſon imperſonee (*viz.* d'un Appropriation) ne poet plead ceo vers Eſtrange Patron. 76. b

6 Le *Statute* de *Gloceſter* 6. E. 1. c. 3. ſerra intend, & expound, ſi nul Fine ſoit levy per Baron & Feme joyntment. 75. b

7 Le *Statute* de 16. R. 2. c. 5. de Præmunire, le cauſe del feſans de ceo. 85

8 Le *Statute* 21. H. 8. c. 13. encounter Pluralities, n'eſt introductive d'un novel ley, mes affirmative del ancient Ley. 69. 72

9 *Diſpenſations* grant ſur le *ſtatute* 25. H. 8. c. 21. per l' Archeveſque de Canterbury, contrary al rules del Cannon Ley, ſont void. 73. b

10 Le *Statute* 27. H. 8. c. 26. ne toll le Cuſtome *Denbigh* en *Gales*. 30. b. 40

11 Le *Statute* 34. & 35. H. 8. c. 26. ad tout ouſterment aboliſh le Cuſtome de *Gavelkind* en *North Wales*. 50

S

12 Pur *Iriſh Statutes Vid. Ireland Par.* 16. 17. 18.

Subſidy.

1 Cuſtomes ſont certain & perpetual duties, payable al *Roy*, come enheritance de ſon Corone, pur Merchandiſes tranſport travers le Mer del un Relm al auter. 8

2 L' *Ancient & grand Cuſtome* eſt due de common droit, & nemy per Benevolence, ou Act de *Parliament.* 8. b

3 Le *petit & novel Cuſtome*, & *Buttlerage*, payable per Merchants ſtrangers ſolement, avoit commencement en temps E. 1. Et fuit confirm per l' Act de *Parliament.* 27. E. 3. c. 26. 9. b. 10. a. b.

4 *Priſage* pur Wines eſt due per Preſcription, & parcel del ancient Enheritance de la Corone. 10

5 Citizen de *London* que eſt Freeman, & pay *Scot* & *Lot* la, ſerra free de *Priſage* pur Wines per Charter. 10. b

6 Le *Roy* ad Enheritance en le Subſidy de *Pondage* en *Ireland*, mes n'ad ceo forſque durant ſon natural vy en *Engleterre.* 12

7 Queux Cuſtomes paſſeront per queux parols. *Vid. Grant le Roy. Par.* 1. 3, 6, 7, 17, 21, 22.

8 *Cuſtomers* quant accomptable al *Roy*, & quant nemy. *Vid. Grant le Roy. Par.* 4. 5.

9 Iſſint de Cuſtomes & Cuſtomers. *Vid. Grant le Roy. Par.* 16.

T

Suſpenſion v. Extinguiſhment.

T.

Tenure en Capite.

1 UN *Countee Palatine* que ad *Jura Regalia*, poet creater un Tenure en capite, a tenure de luy meſme. 59. 62, b. 66, b

2 Mes Nul auter Subject, que eſt meerement en condition d'un Subject, ne poet creater Tenure en *capite.* 66. b

3 Come le Prince de *Gales* ne poet creater Tenure en *capite.* 66. b

4 Si le *Roy* grant terres *tenendum* de luy, ſans expreſſer aſcun ſervice certain, ceo eſt de ſon perſon, & Tenure en *Capite.* 66. b

5 Tenure del Perſon d'un Countee Palatine, eſteant veſt en le *Roy* per Act de Parliament, ſerra un Tenure en *capite* en le *Roy.* 66

Toll.

1 *Murage* n'eſt forſque Toll, & covient eſtre pay per ceſtuy que achate le choſe: Mes *Cuſtome* eſt payable per le Vender. 13. 16

Treaſon.

1 Le feaſance ou Coynage de *Money* ſans ſpecial Licence, ou Com-

Commandrent del *Roy*, eſt Treaſon al Common Ley. 19

V.

Vicount.

1 EN touts *Counties* ſubject al Ordinary Juriſdiction del Courts

del *Roy*, le *Roy* meſme fait le Vicount. 60. b

2 Mes en *Counties Palatine*, ou le Countee ad *Jura Regalia*, le Countee fait le Vicount. 60. b

Viſitation V. Ordinary.

FINIS.